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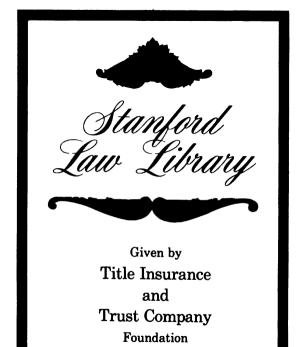
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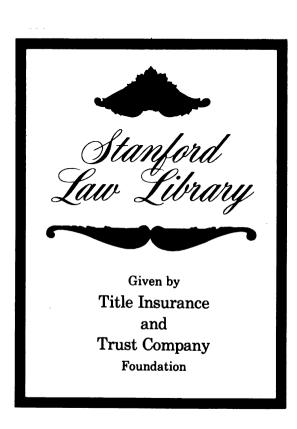
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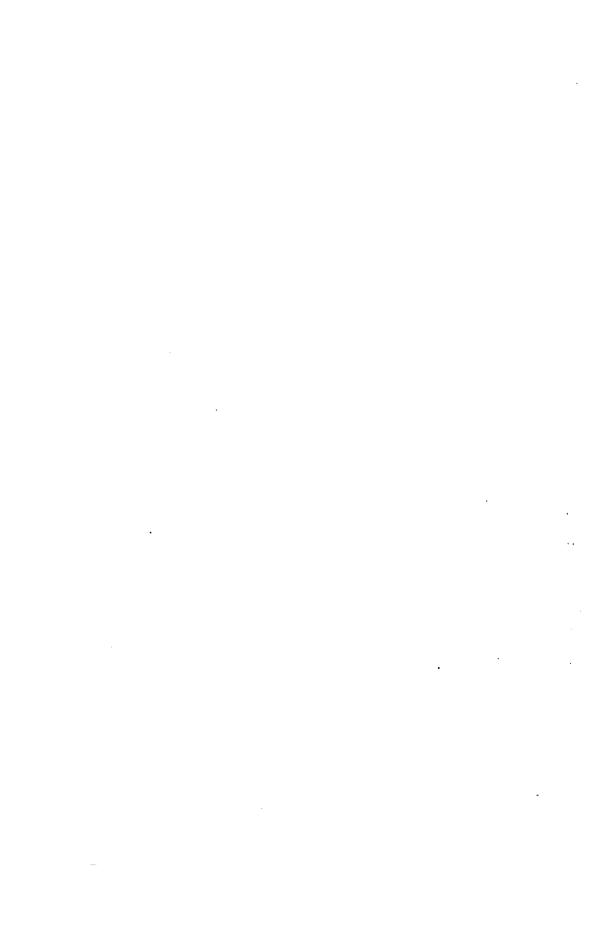
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# PRACTICE

OF

# CONVEYANCING,

&c.

I · . . . • . 

#### INTRODUCTION.

A second volume of this Work is now offered to the Profession.

It was always intended, if the first part of the Work should be favourably received, to furnish Forms for Agreements, Bonds, and Wills, on the same plan; and since the publication of the first volume, the materials of the ensuing pages have, therefore, been gradually collecting. I have been induced to hasten the appearance of this volume, partly by the kind reception of the first, but chiefly from finding that its plan, and many of the Forms, had been, in more than one instance, freely adopted by others without acknowledgment. I have endeavoured, therefore, at some inconvenience to myself, rather to complete my original design, than see it carried through by others.

The two volumes now published, embrace all the precedents which come within the plan of the Work; and it will readily be seen, therefore, that it does not pretend to interfere with the extensive Collections of Precedents which are popular in the Profession. I may be allowed to express a hope, at some future time, to be

able to complete a third volume, embracing the principal rules for the examination of Abstracts of Title; and should this be done, every thing will be given which properly comes within the title of the Work.

It will be seen at a glance that some variation has been made in the printing of this volume, but as this will be found greatly to facilitate the reference to the Work, it will no doubt be readily excused.

The Forms have been collated with those used by other conveyancers; and whilst the long established expressions to which a well known meaning is attached have been carefully preserved, it is hoped that all useless words will be found to have been struck out.

The theory of Conveyancing has not been treated of. Wherever it was thought that a note would assist the use of a Form, it has been given; and the Cases on stamping Agreements and Bonds, as they were directly within the plan of the Work, have been considered at some length.

As it may happen that this volume may fall into the hands of persons not possessing the first, every title has been rendered as complete as possible, and all reference to the first volume not absolutely necessary, has been for this reason avoided.

The Plan of this volume is as follows:--

It is divided into three titles — AGREEMENTS, BONDS, and WILLS. These classes are divided into

one-hundred and sixty-nine Sections, distinguished by the roman numerals, and carried throughout the Work. These Sections are subdivided into numbered placita.

The marks \* which occur in the Forms are now to be noticed

- 1. The reference to the parcels in all legal instruments must of course depend upon its subject matter. Thus, if it be a dwelling house, the reference throughout will be "messuage or dwelling house and premises," &c. &c. This reference to the subject matter of the instrument will be found to be generally alluded to by the words "messuage, &c." and is inclosed in braces {} in order that the reference which will suit the nature of the premises may be inserted.
- 2. The word "heirs" is sometimes inclosed in similar braces, as by the substitution of "executors and administrators," the Form may be adapted for personal estate.
- 3. Parts of some of the Forms are inclosed by the usual brackets; the part so inclosed is in general only applicable to some particular circumstance. Where the reason of the brackets is not obvious, it is explained in a note on the spot.

A Synthesis of the whole of the Forms precedes the

<sup>\*</sup> The Introduction to Vol. I. may here be consulted with advantage.

body of the Work, and points out the proper order and arrangement in which the Forms should be placed.

In this it should be observed, that the Roman numerals refer to the sections, and the Saxon numerals to the placita.

The Forms referred to may sometimes require an alteration of the gender or number.

The proper clause will sometimes be found in a note to the Form referred to.

In this volume, the better to explain the way in which the clauses are used, an Entire Form of an Agreement, and of a Bond, and two Entire Forms of Wills have been introduced.

Two copious Indexes are added; and the Index to the Forms will enable the student to find with readiness any clause contained in the Work, however minute.

The work only professes to give Forms of usual occurrence; few special clauses have therefore been inserted, but it is hoped that nothing coming within the range of ordinary practice will be found to have been omitted.

In concluding my labours, I feel much pleasure in acknowledging the kindness of my friend Mr. PARKEN, who on learning my intention of preparing this Work, with great liberality offered me the use of his valuable collection of Manuscript Wills.

J. S.

## SYNTHESIS

OF

# Forms.

#### AGREEMENTS.

- I. AGREEMENTS FOR THE SALE AND PURCHASE OF PROPERTY.
  - II. AGREEMENTS FOR MORTGAGES AND ANNUITIES.
  - III. AGREEMENTS FOR LEASES.
  - IV. BUILDING AGREEMENTS.
    - V. AGRERMENTS FOR EXCHANGES AND PARTITIONS.
  - VI. MISCELLANEOUS AGREEMENTS.
  - I. AGREEMENTS FOR THE SALE AND PURCHASE OF PROPERTY.

1.

Agreement for the Purchase of Property by an Agent. By an

By an agent.

Commencement I. 1. 4. Covenants and provisions according to the circumstances; see the succeeding forms Conclusion LII. 3. (a)

<sup>(</sup>a) No reference to the conclusion, unless there is some spe-Conclusion. cial circumstance connected with it, will be given, as all agreements, whatever be their subject-matter, conclude alike.

2

Of freeholds. Agreement for the Purchase of Freeholds of moderate Value (usual Clauses.)

Commencement I. 1. Covenants and provisions IV. 1, 2. 4—8. 10—12. 14. Agreement as to payment of sum by way of stipulated damages on breach of contract XXIII. 1.

3.

Of manor. Agreement for the Purchase of a Manor or large Freehold Property.

Commencement I. 1. Covenants and provisions II. 1, 2. IV. 2. 6—8. 10—12. 14. Agreement as to payment of sum by way of stipulated damages on breach of contract XXIII. 1.

4.

Of property of Agreement for the Purchase of the Property of Married married wo men. Women (the agreement being by the husband.)

Commencement I. 1. 3. Covenants and Provisions IV. 1. 2. 4—8. 10—12. 14. Provision as to sum by way of liquidated damages XXIII. 1.

5.

Of houses or other buildings.

Agreement for the Purchase of Houses or other Buildings.

Commencement I. 1. Covenants and provisions IV. 1. III. 1. IV. 2. 4—8. 10. 13. Provision as to sum by way of liquidated damages XXIII. 1.

### Agreement for the Purchase of Copyholds.

Of copyholds.

Commencement I. 1. Covenants and Provisions IV. 1, 2. (e) V. 1—4. IV. 10—12. 14. Provision as to stipulated damages on breach of contract XXIII. 1.

7.

# Agreement for the Purchase of Leaseholds.

Of leaseholds.

Commencement I. 1. Covenants and Provisions VII. 1, 2, 3. IV. 5. VII. 5. IV. 10—12. 14. Provision as to stipulated damages on breach of contract XXIII. 1.

8.

Agreement for the Purchase of Leaseholds where the Of leaseholds.

Lessor's assent is necessary.

Commencement I. 1. Covenants and Provisions VII. 1—3. IV. 5. VII. 4—6. IV. 11. 12. 14. Provision as to stipulated damages on breach of contract XXIII. 1.

9.

Agreement for Sale by two joint Tenants, Tenants in Com- By two to one. mon, or Coparceners to Purchaser.

Commencement I. 1. Covenants and Provisions IV. 1, 2. 4—8. 10. 12. 14. Provision as to sum by way of stipulated damages XXIII. 1.

By one to two. Agreement for Sale by Vendor to Two as joint Tenants and Tenants in Common.

Commencement I. 1. Covenants and Provisions IV. 1, 2. 4—8. 10—12. 14. Provision as to sum by way of stipulated damages XXIII. 1.

#### 11.

of estate for Agreement for the Purchase of Estate for Life of Vendor. life.

Commencement I. 1. Covenants and Provisions VI. 1. IV. 2. VI. 2. IV. 5. 7. VI. 3. Provision as to sum by way of stipulated damages XXIII. 1.

#### 12.

Of estate per auter vie.

Agreement for the Purchase of Estate per auter vie.

Commencement I. 1. Covenants and Provisions VI. 1. n. IV. 2. VI. 2. n. IV. 5. 7. VI. 3. Provision as to sum by way of stipulated damages XXIII. 1.

#### 13.

Of estate for lives.

Agreement for the Purchase of Estate for Lives.

Commencement I. 1. Covenants and Provisions VI. 1. n. VI. 2. VI. 2. n. IV. 5. 7. VI. 3. Provision as to sum by way of stipulated damages XXIII. 1.

Agreement for the Purchase of a Manor, Advowson, and Of manor, adother Premises.

Commencement I. 1. Covenants and Provisions II. 1. 2. Vol. I. E. 22. IV. 2. 6. 8. 10-12. Provision as to sum by way of stipulated damages XXIII. 1.

#### 15.

Agreement for the Purchase of Freeholds, Copyholds, and Of freeholds, Leaseholds.(a)

copyholds, & leaseholds.

Commencement I. 1. Covenants and Provisions IV. 1.2. 4. V. 1. IV. 2. VII. 3. IV. 5-8, 10-12, 14. Provision as to stipulated damages on breach of contract XXIII. 1.

#### 16.

Agreement for the Purchase of Lands, together with Tim- Of lands and ber, with Provisions for the valuation of the Timber.

timber.

Commencement I. 1. Covenants and Provisions IV. 1. n. (f) III. 13. IV. 2. 4. X. 1-3. IV. 5-8. 12. 14. Provision as to sum by way of liquidated damages XXIII. 1.

<sup>(</sup>a) In this form, as in some others, references are not given Practical dito the precise clauses, but to those which will easily enable the rection. draftsman to draw the form. The introduction, on every occasion, of forms precisely applicable, was not within the limits of the work.

Of house and fixtures.

Agreement for the Purchase of House, together with Fixtures, with Provisions for their valuation.

Commencement I. 1. Covenants and Provisions IV. 1. III. 2. 3. IV. 2. 4. XI. IV. 5—8. 11. 12—14. Provision as to sum by way of liquidated damages XXIII. 1.

#### 18.

Of plantation and slaves.

Agreement for the Purchase of a Plantation and Slaves situate in the West Indies. (a)

Commencement I. 1. Covenants and Provisions IV. 1, E. 15. IV. 2. 4—8, 10—12, 14. Provision as to sum by way of liquidated damages XXIII. 1.

#### 19.

Where part of the purchase money is secured upon the premises. Agreement for the Purchase of Freeholds, (b) where part of the Purchase Money is secured on the Premises by way of Mortgage.

Commencement I. 1. Covenants and Provisions IV. 1. 2. 4. XIV. IV. 6—8. 10—12. 14. Provisions as to sum by way of liquidated damages XXIII. 1.

Leaseholds.

<sup>(</sup>a) An agreement in writing is necessary on the purchase of an estate in the West Indies; as in all these colonies, except Trinidad, Demerara, St. Lucia, and Bermuda, the provisions of the Statute of Frauds have been re-enacted by the local legislatures. As to slaves being real or personal estate, see Vol I. 47. n. and 6 Parken and Stewart's Prec. in Conveyancing, p. 470.

<sup>(</sup>b) See an agreement of this nature as to leaseholds, post 31.

Agreement for the Purchase of Lands where the Purchase Where pur-Money is to be paid by instalments.

chase money is payable by instalments

Commencement I. 1. Covenants and Provisions IV. 1. 2. 4. IX. IV. 6-8. 10-12. 14. Provision as to sum by way of liquidated damages XXIII. 1.

#### 21.

Agreement for Purchase where time is to be the Essence Where time is of the Contract.

to be the essence of the contract.

Commencement I. 1. Covenants and Provisions according to the particular circumstances; see the preceding forms. vision that time shall be the essence of the contract XII.

#### 22.

Agreement where the Purchaser is to pay interest on Pur- Special agreechase Money, if the Contract is not completed by a terest. certain day.

Commencement I. 1. Covenants and Provisions according to the particular circumstances; see the preceding forms. Provision as to interest XIII.

#### **23**.

Agreement for Purchase of Lands where Vendor is to Where vendor is to retain retain Title Deeds. title-deeds.

Commencement I. 1. Covenants and Provisions IV. 1. 2. 4. Provision as to sum by way of XV. 1. IV. 5—8. 10—12. 14. liquidated damages XXIII. 1.

ser is to discharge incumbrances.

Where purchase Agreement for the Purchase of Lands where Purchaser is to discharge incumbrances.

> Commencement Covenants and Provisions as in the preceding forms according to the circumstances. Agreement that purchaser shall discharge incumbrances XVI.

#### **32**.

Where purchaser is to share expenses of inclosure act.

Agreement for the Purchase of Lands where the Purchaser is to pay a share of the expenses of Inclosure.

Commencement Covenants and Provisions as in the preced-Special clause as to purchaser sharing expenses of inclosure act XVII.

#### 33.

Where disputes are to be referred to arhitrators

Agreement for a Purchase where all disputes are to be referred to Arbitrators.

Commencement Covenants and Provisions as in the preceding forms. Clause for arbitration XIX.

#### 34.

Where title is Agreement on the Purchase of Lands where the title is defective. defective.

> Commencement I. 1. Covenants and Provisions IV. 1. XX. Provision as to liquidated damages XXIII. 1.

Agreement where part of the title is defective.

Where part of the title is defective.

Commencement I. 1. Covenants and Provisions IV. 1. XXI. IV. 4—8. 9—12. 14. Provision as to sum by way of liquidated damages XXIII. 1.

36.

Agreement for Repurchase of Premises on defect not being To repurchase. cleared up.

Commencement I. 1. Covenants and Agreements XXII.

II. AGREEMENTS FOR MORTGAGES AND ANNUITIES.

1.

Agreement for a Mortgage of Freeholds, Copyholds, or For mortgage.

Leaseholds.

Commencement I. 1. Agreements and Provisions XXIV. 1-4.

To grant annuity. Agreement to grant an Annuity secured on Freehold, Copyhold, or Leasehold Property.

Commencement. I. 1. Agreements XXV. 1-10. (a)

3

To grant annuity.

Agreement to grant a Personal Annuity.

Commencement I. 1. Covenant XXV a.

#### III. AGREEMENTS FOR LEASES.

1.

For house in Agreement for a House in Town for a Term of Years town.

(taken instead of a Lease.) (b)

Commencement I. 1. Covenants and Provisions XXVII. 1. III. 1. XXVIII. 1. 2. XXIX. 1. 2. 4.(a)

Stipulated damages.

(a) A provision for enforcing the agreement by the payment of a sum by way of stipulated damages, may be found useful, see the form XXIII. 1.

<sup>(</sup>b) As to this see p. 40.

Agreement for a Furnished House in Town for a Term of Furnished house in town.

Years (taken instead of a Lease.)

Commencement I. 1. Covenants and Provisions XXVII. 1. III. 1. 3. XXVIII. 1. 2. XXIX. 1—5.

3.

Agreement for an Unfurnished or Furnished House in the Country for Years (taken instead of a Lease.)

Commencement I. 1. Covenants and Provisions XXVII. 1. III. 2. or 2. 3. XXVIII. 1. 2. XXIX. 1. 2. 4. or 1-5.

4

Agreement for a House in Town or Country either House for Furnished or Unfurnished for Months or Weeks (taken weeks. instead of a Lease.)

Commencement I. 1. Covenants and Provisions XXVII. 1. III. 1. or 2. 3. XXVIII. 1. 3. XXIX. 1. 2. 4. or 1—5.

5.

Agreement for a First or other Floor Unfurnished for a Unfurnished floor of house for year, Months, or Weeks.

Commencement I. 1. Covenants and Agreements XXVII. weeks,

1. III. 4. 5. XXVIII. 1. 2. or 1. 3. XXIX. 1. 2. 4.

6

Furnished floor for year, months, or weeks. Agreement for a First or other Floor Furnished for a Year, Months, or Weeks.

Commencement I. 1. Covenants and Agreements XXVII. 1. III. 4. 3. 5. XXVIII. 1. 2. or 1. 3. XXIX. 1—5.

7.

For floor by person carrying on profession or trade. Agreement by a Medical Man, Attorney, or other Person carrying on Profession or Trade, for a First or other Floor Furnished or Unfurnished for a Year, Months, or Weeks.

Commencement I. 1. Covenants and Agreements XXVII. 1. III. 4. 5. or 4. 3. 5. XXVIII. 1. 2. or 1. 3. XXIX. 1. 2. 4. or 1—5.

8.

For lease of a house in town with or with-out furniture.

Agreement for a Lease of a House in Town, with or without Furniture, for a Term of Years.

Commencement I. 1. Covenants and Provisions XXVII. 2. III. 1 or 1. 3. XXVIII. 4. XXX. (a) 1—5. 7. 9—11. 12. 14—17. 19—22. 24. XXXVI. 1—3. XL. 5.

Usual claims.

<sup>(</sup>a) References are given to all the usual covenants and provisions, but their adoption in the particular instance must be left to the discretion of the draftsman.

Agreement for a Lease of a House in the Country, with or For lease of a without Furniture, for a Term of Years.

bouse in the country with or without furniture.

Commencement I. 1. Covenants and Provisions XXVII. 2. III. 2. or 2. 3. XXVIII. 4. XXX. (a) 1—5. 9—11. 12. 14— 17. 19-22. 24. XXXVI. 1-3. XL. 2.

10.

Agreement for an Under-lease of a House in Town or For underlease Country, Furnished or Unfurnished.

of a house in town or country furnished

Commencement I. 1. Covenants and Provisions XXVII. 2. or unfur-III. 1. or 2. or 1. 3. or 2. 3. XXVIII. 4. XXX. 1-5. 9-11. 13-17. 19-22. 25. 26. XXXVI. 1-3. XL. 1, 2.

11.

Agreement for a Lease of a Small Shop.

For lease of a shop.

Commencement I. 1. Covenants and Provisions XXVII. 2. XXX. 1-5. 9. 13. 15. 16. 20-23. XXXVI. 1-3. III. 12. XL. 2.

12.

Agreement for the Lease of a Shop in a Principal Street. For lease of

shop.

Commencement I. 1. Covenants and Provisions XXVII. 2. III. 12. XXVIII. 4. XXX. 1—7. 9—11. 13—17. 19. XXXI. 1-3. XXX. 20-22. 24. XXXVI, 1-3. XL. 5.

Underlease of a shop.

Agreement for the Under-lease of a Shop.

Commencement I. 1. Covenants and Provisions XXVII. 2. III. 12. XXVIII. 4. XXX. 1—7. 9—11. 13—17. 19. XXXI. 1—3. XXX. 20—22. 25. 26. XXXVI. 1—3. XL. 1. 2.

14.

For lease of public house.

Agreement for a Lease of a Public House.

Commencement I. 1. Covenants and Provisions XXVII. 2. III. 12. XXVIII. 4. XXX. 1—5. 9. 10. 14—17. 19. XXXVIII. 1. XXX. 20—23. XXXVI. 1—3. XXXVIII. 2. XL. 2.

15.

For lease by tenant in tail. Agreement for Lease of a House by Tenant in Tail.

Commencement I. 1. Covenants and Provisions XXVII. 2. III. 1. XXVIII. 4. XXX. 1—5. 9—12. 14—16. 19. 20—22. 24. XXXVI. 1—3. XL. 4.

16.

For lease by husband and wife. Agreement for a Lease of a House by Husband and Wife seised in Right of his Wife.

Commencement I. 1. 3. Covenants and Provisions XXVII. 2. III. 1. XXVIII. 4. XXX. 1—5. 9—12. 14—16. 19. 20—22. 24. XXXVI. 1—3. XL. 4.

Agreement for Lease of a Copyhold Messuage for a Term For lease of of Years.

Commencement I. 1. Covenants and Provisions XXVII. 2. III. 2. XXVIII. 4. XXX. 1—5. 9. 10. 12. 14—16. 20—23. XXXVI, 1-3. XXXVII, XL, 2. 6.

#### 18.

Agreement for Lease of a Farm by Owner of Inherit- For lease of a ance or his Steward.

Commencement I. 1. 4. Covenants and Provisions XXVII. 2. III. 6. XXVIII 6. XXX. 1-4. 9. 10. 15-17. 19. XXXIX. 1-9. XXX. 20-23. XXXVI. 1-3. XXXIX. 10. XL. 3. Conclusion LII. 3.

#### 19.

Agreement for Lease of a Farm by Tenant in Tail.

For farm by tenant in tail.

Commencement I. 1. Covenants and Provisions XXVII. 2. III. 6. XXVIII. 6. XXX. 1-4. 9. 10. 15-17. 19. XXXIX. 1-9. XXX, 20-23. XXXVI, 1-3. XXXIX, 10. XL, 4.

#### 20.

Agreement for Lease of a Farm by Husband in Right For farm by of his Wife.

busband and wife.

Commencement I. 1.3. Covenants and Provisions XXVII. 2. III. 6. XXVIII. 6. XXX. 1—4. 9. 10. 15—17. 19. XXXIX. 1-9. XXX. 20-23. XXXVI, 1-3. XXXIX. 10. XL. 4.

For underlesse of farm.

Agreement for Under-lease of a Farm.

Commencement I. 1. Covenants and Provisions XXVII. 2. III. 6. XXVIII. 6. XXX. 1-4. 9. 10. 15-17. 19. XXXIX. 1-9. XXX. 20-23. XXXVI. 1-3. XXXIX. 10. XL. 1. 2.

#### **22**.

For lease of tithes.

Agreement for Lease of Tithes.

Commencement I. 1. Covenants and Provisions XXVII. 2. III. 9. XXVIII. 4. XXX. 1. 2. XXXII. 1. 2. XXX. 18. XXXVI. 1. 2. XL. 2.

**23**.

For lease of glebe lands. Agreement for Lease of Glebe Lands.

Commencement I. 1. Covenants and Provisions XXVII. 2. III. 10. XXVIII. 4. XXX. 1. 2. XXXIX 1—10. XXX. 10. 20-23. XXXVI. 1, 2, XL. 2.

#### 24.

Repairing lease of house.

Agreement for Repairing Lease of a House, the Lessor being the Owner of the Inheritance.

Commencement I. 1. Covenants and Provisions XXVII. 2. 1II. 1. XXVIII. 5. XXX. 1. 3. XXXV. 1. 2. XXX. 5. 7. 9. 10. 12. 14-17. 20-22. 24. XXXVI, 1-3. XL, 2.

Agreement for Repairing Lease of a House, the Lessor For repairing having only a Term in the Premises.

Commencement I. 1. Covenants and Provisions XXVII. 2. III. 1. XXVIII. 5. XXX. 1. 3. XXXV. 1. 2. XXXIII. 4. XXX. 5. 7. 9. 10. 12. 14—17. 20—22. 25. XXXVI. 1—3. XL. 1.

#### 26.

### Agreement for Building Lease of Freeholds.

For building lease of freeholds.

Commencement I. 1. Covenants and Provisions XXVII. 3. III. 7. XXVIII. 5. XXX. 1—5. 7—12. 14—16. 20—23. XXXIII. 1—7. XXXVI, 1—3. XL. 2.

#### 27.

# Agreement for Building Lease of Copyholds.

Building lease of copyholds.

Commencement I. 1. Covenants and Provisions XXVII. 3. III. 7. XXVIII. 5. XXX. 1—5. 7—12. 14—16. 20—23. XXXIII. 1—7. XXXVI. 1—3. XXXVII. XL. 2.

#### 28.

Agreement for Building Lease where a Surety joins.

Building lease where surety joins.

Commencement I. 1. Covenants and Provisions XXVII. 3. III. 7. XXVIII. 5. XXX. 1—5. 7—12. 14—16. 20—23. XXXIII. 1 n. b.—7. XXXVI. 1—3. XL. 2.

For building lease.

Agreement for Building Lease where the Undertaking is very Extensive.

Commencement I. 1. Covenants and Provisions XXVII. 3. III. 7. XXVIII. 5. XXXIII. 1—7. 11. XXXIV. XXX. 1—5. 7—12. 14—23. XXXVI. 1—3. XL. 2.

#### **30**.

For finishing lease.

Agreement for a Finishing Lease.

Commencement I. 1. Covenants and Provisions XXVII. 4. III. 11. XXVIII. 5. n. b. XXX. 1—5. 7—10. 12. 14—16. 20—23. XXXIII. 8—10. XXXVI. 1—3. XL. 2.

#### 31.

For finishing lease.

Agreement for Lease of an Unfinished House which has been partly completed by Another.

Commencement I. 1. Recital XXVI. Covenants and Provisions XXVII. 4. III. 11. XXVIII. 5. XXX. 1—5. 7—10. 12. 14—16. 20—23. XXXIII. 8—10. XXXVI. 1—3. XL. 2.

#### IV. BUILDING AGREEMENTS.

1.

Agreement for Building a Small House.

For building a small house.

Commencement I. 1. Covenants and Provisions XLII. 1. n. (a) (b) 7. 11. 14. 18. 20. 24. Provision as to sum by way of liquidated damages on breach of the agreement XXIII. 1.

2.

Agreement for Building Mansion-House, Chapel, or any For building other (a) large Erection or Erections.

mansion-house chapel, &c.

Commencement I. 1. Recitals XLI, 1-4. Commencement I. 8. XLII. 1—19. 21—24.

#### V. AGREEMENTS FOR EXCHANGES AND PARTITION.

1.

Agreement for the Exchange of Freeholds.

Of Freeholds.

Commencement I. 1. Covenants and Provisions XLIII. 1-9. (b)

(a) For agreements for building a bridge and a ship, see 1 Byth. Conv. 310. 325. Stewart's edit.

<sup>(</sup>b) References are here given to the clauses usual in ex- Other clauses. changes; but clauses for appointing new referees, and for binding

Of copyholds.

Agreement for the Exchange of Copyholds.

Commencement I. 1. Covenants and Provisions XLIII. 1—3 n. a. 4. 5. 7 n. b. 8. 9.

3.

Of lesseholds.

Agreement for the Exchange of Leaseholds.

Commencement I. 1. Covenants and Provisions XLIII. 1. 2 n. 3 n. c. 4 n. a. 5. 7—9.

4.

Of freeholds.

Agreement for the Partition of Freeholds by Joint Tenants, Tenants in common, or Coparceners.

Commencement I. 1. Recitals XLIV. 1. 3. Covenants and Provisions XLIV. 4—7. 10. 11. 13. 15. 16. Provision as to sum by way of stipulated damages on breach of contract XXIII. 1.

5.

Of copyholds. Agreement for the Partition of Copyholds by Joint Tenants, Tenants in common, or Coparceners.

Commencement I. 1. Recitals XLIV. 1 n. 3. Covenants and Provisions XLIV. 4—7. 10. 11. 13—16. Provision as to stipulated damages on breach of contract XXIII. 1.

the parties to the contract by a sum by way of stipulated damages, and other clauses, may often be properly introduced. These will be found under Agreements for Purchase and for Partition, and in the Index to the Forms.

Agreement for the Partition of Leaseholds by Joint Of leaseholds. Tenants, or Tenants in common.

Commencement I. 1. Recitals XLIV. 2. 3. Covenants and Provisions XLIV. 4-7, 9-11, 13, 15, 16. Provision as to stipulated damages on breach of contract XXIII. 1.

7.

Agreement for Partition of an Estate in reversion or Of estate in reremainder by Joint Tenants, Tenants in common, or mainder. Coparceners.

version or re-

Commencement I. 1. Recitals XLIV. 1 n. 3. Covenants and Provisions XLIV. 4n-7, 10, 11, 13, 15, 16. Provision as to sum by way of liquidated damages XXIII. 1.

8.

Agreement for Partition of Freeholds by Joint Tenants, &c. Where comwhere Commissioners are appointed to make Partition.

missioners are to make parti-

Commencement I. 1. Recitals XLIV. 1. 3. Covenants and bolds. Provisions XLV. 1. XLIV. 5-7, 10, 11, XLV, 2 or 3, XLIV. 13, 15, 16,

9.

Agreement for Partition of Copyholds by Joint Tenants, &c. The same of where Commissioners are appointed to make Partition.

copyholds.

Commencement I. 1. Recitals XLIV. 1 n. 3. and Provisions XLV. 1. XLIV. 5-7. 10. 11. XLV. 2 or 3. XLIV. 13-16.

The same of lesseholds.

Agreement for Partition of Leaseholds by Joint Tenants, &c. where Commissioners are to make Partition.

Commencement I. 1. Recitals XLIV. 2. 3. Covenants and Provisions XLV. 1. XLIV. 5—7. 9—11. XLV. 2. or 3. XLIV. 13. 15. 16.

VI. MISCELLANEOUS AGREEMENTS.

1.

To refer disputes to arbitration. Agreement to refer Disputes to the Arbitration of one Arbitrator.

Commencement I. 1. Covenants and Provisions XLVI. 1. 2. 4—16.

2.

To refer disputes to arbitration. Agreement to refer Disputes to the Arbitration of two Arbitrators.

Commencement I. 1. Covenants and Provisions XLVI. 1—16.

Agreement to Enfranchise Copyholds.

To enfranchise copyholds.

Commencement I. 1. Covenants and Provisions XLVII. 1. 2. and n.

4.

Agreement between Author and Publisher for the Sale of a work.

a Work where a Sum is paid for the Copyright.

Commencement I. 1. Agreements XLVIII. 1-13.

5.

Agreement between Author and Publisher for the Sale of For sale of a Work where the Profits are divided.

Commencement I. 1. Agreements XLVIII. 1—4. 5.7—9. XLVIII a.

6.

Agreement between Author and Publisher for the Sale of For sale of a work.

• a Work by Commission.

Commencement I. 1. Agreements XLVIII b. 1—3. XLVIII. 7—9. XLVIII b. 4.

For the editing Agreement for the Editing of a Work between Pubof a work. lisher and Editor.

Commencement I. 1. Agreements XLVIII c. 1-8.

8.

For the translation of a work. Agreement for the Translating of a Work between Publisher and Translator.

Commencement I. 1. Agreements XLVIII d. 1.3. XLVIII c. 5—8.

9.

For an engraving.

Agreement between Publisher and Engraver for the Engraving of a Painting.

Commencement I. 1. Agreements XLVIII e. 1-6.

10.

For sale of goods.

Agreement between Principal and Factor for the Sale of Goods in a City or Town.

Commencement I. 1. Agreements XLIX. 1-32.

Agreement to Charge Lands with the Payment of a sum For charge of of Money.

Commencement I. I. Agreement L. Conclusion LII. 4. and see LXIII b.

12.

Agreement to pay the Debts of Another.

To pay debts.

Commencement I. 1. Agreement LI. 1.

13.

Agreement to pay Debt contracted during Infancy. (a)

Commencement I. 1. Agreement to pay LI a

14.

Agreement(b) by Bankrupt to pay Debt which is barred by By bankrupt his Certificate.

Commencement I. 1. Agreement to pay LI a.

<sup>(</sup>a) This agreement must be in writing by a late Stat. 9 Geo. Writing necessity. c. 14. s. 5.

<sup>(</sup>b) This agreement must be in writing, 6 Geo. IV. c. 16. s. 131. Writing neces-

To dismiss chancery suit.

Agreement to dismiss Chancery Suit.

Commencement I. 1. Agreement LI b.

16.

For presenta- Agreement for the presenting such Person as A B shall appoint.

Commencement I. 1. Agreement LI c.

**77**.

Agreement to apply for an Act of Parliament.

Commencement I. 1. Agreement LI d. 1-5.

#### BONDS.

1.

Bond from Vendor to Purchaser, or Mortgagor to Mort- Where title is gagee, on a Title being defective.

Commencement LIII. 1. Recitals and Condition LIV.

2.

Bond from Vendor to Purchaser, or Mortgagor to Mort- Where title is defective. gagee, as a Security against a Right of Dower.

Commencement LIII. 1. Recitals and Condition LV.

3.

Bond by Principal and Surety given to a Purchaser or Where vendor Mortgagee, where it is doubtful whether the Vendor or may become Mortgagor will not become a Bankrupt before the end of Two Months.

or mortgagor

Commencement LIII. 3. Recitals and Condition LVI.

4

That infants shall convey.

Bond by Vendor to Purchaser to secure the Conveyance of certain Premises by Infants, when they shall attain Twenty-One.

Commencement LIII. 1. Recitals and Provisions LVII.

5.

On surrender of copyholds.

Bond from a Vendor to a Purchaser on the Surrender of a Copyhold Estate, containing Covenants for Title.

Commencement LIII. 1. Recitals of contract for purchase and surrender of the premises to purchaser Vol. I. 102. (4) B.60. Condition LVIII.

6.

Not to trade within miles of a Vendor to a Purchaser of a Good-will of a miles of . Trade, not to trade within miles of a certain Town.

Commencement LIII. 1. Recitals and Condition LIX.

7.

On mortgage. Bond by Mortgagor of Freeholds to Mortgagee for Payment of the Mortgage Money.

Commencement LIII. 1. Condition LX.

Band by Mortgagor of Copyholds to Mortgagee for Pay- On mortgage.

ment of the Mortgage Money.

Commencement LIII. 1. Condition LX a.

9.

Bond by Grantor to Annuitant to secure the Payment of On annuity.

the Annuity where the same is repurchasable.

Commencement LIII. 1. or 3. Condition LXI. 1-3.

10.

Bond by Grantor to Annuitant, to secure the Payment of On annuity. the Annuity where the same is not repurchasable.

Commencement LIII 1, or 3. Condition LXI. 1.3.

11.

Bond on a Marriage for making Provision for the Wife On marriage. and Issue of the Marriage, in case of the Death of the Husband.

Commencement LIII. 1. Recitals and Condition LXII. or LXII a.

Bond to secure the Payment of Money from one to one. ment of money. Commencement LIII. 1. Condition LXIII. 2.

13.

The same where there are sureties.

Bond to secure the Payment of Money where there are one or more Sureties.

Commencement LIII. 3. or 4. Recitals and condition LXIII. 1. 2. n. (a).

14.

able by instalments.

The same pay- Bond to secure the Payment of Money where it is to be repaid by Instalments.

Commencement LIII. 1. Condition LXIII. 2. n. (c).

15.

able on notice.

The same pay. Bond to secure the Payment of Money where it is to be paid on notice from the Obligee.

> Commencement LIII. 1. Condition LXIII. 2. n. (c). or LXIII a.

> > 16.

For transfer of stock.

Bond for the Transfer of Stock by a certain Day. Commencement LIII. 1. n. (a). Condition LXIV.

Bond by Country Bankers to London Bankers, as a For security of bankers by other bankers.

Security for Advances to be made to the Former.

Commencement LIII. 4. Recitals and Condition LXV.

18.

A similar Bond, where it is intended that it shall be a The same.

Continuing Security notwithstanding Change of Partners in the Firm.

Commencement LIII. 4. Recitals and Condition LXV. n. (a).

19.

Bond by Customers to Bankers as a Security for any For security of bankers by Monies to be advanced to the Former.

Commencement LIII. 3 or 4. Recitals and Condition LXVI.

20.

Bond by Principal and Sureties to a Tradesman as a For goods Security for any Goods advanced to Principal.

Security for any Goods advanced to Principal.

Commencement LIII. 3. or 4. Recitals and Condition LXVI. n. (a).

VOL. 11.

For security of an agent.

Bond from Attorney for the Security of his London Agent.

Commencement I. 1. Condition LXVI. a.

22.

For performance of covenants.

Bond for the Performance of Covenants contained in a Lease.

Commencement LIII. 1. Condition LXVI. n. (a).

23.

The same. Bond for the Performance of Covenants contained in an Indenture of even Date.

Commencement LIII. 1. Condition LXVII.

24.

For clerk or servant.

Bond for the Faithful Conduct of Clerk or Servant.

Commencement LIII. 3. Recitals and Condition LXVIII. or LXVIII a.

BONDS.

XXXV

.25

Bond by a Principal and Surety that the Former shall not Not divulge Secret.

Divulge Secret of Trade.

Commencement LIII. 3. Recitals and Condition LXVIII. n. (a).

**26**.

For collector.

Bond by a Principal and Two Sureties for the Performance of the Duties of the Collector of a Chapel.

Commencement LIII. 4. Recitals and Condition LXIX.

27.

For re-funding legacy.

Bond by Legatee to Executor for Refunding a Legacy in Case of a Deficiency of Assets.

Commencement LIII. 1. Recitals and Condition LXX.

28.

Post Obit Bond.

Post obit.

Commencement LIII. 1. Recitals and Condition LXXI.

For arbitra-

Bond for a Reference to Arbitration.

Commencement LIII. 1. Recitals and Condition LXXII.

30.

Forindemnity. Bond for Indemnifying a Person against any Loss to be Sustained by the Execution of Indentures.

Commencement LIII. 1. Condition LXXII a.

31.

For securing erection of building.

Bond for Securing an Undertaking to Build a Chapel or other Buildings.

Commencement LIII. 1. Condition LXXII b.

32.

For indemnity as to accepting bills. Bond for Indemnifying a Person against all Loss to be Sustained on account of Accepting a Bill.

Commencement LIII. 1. Condition LXXII. c.

Bond for the Due Performance of Trusts of Indenture or For performance of trusts.

Will. (a)

Commencement LIII. 1. Condition LXXII. d.

(a) As to bonds of resignation see post p. 204, n. (a)

#### WILLS.

- 1. WILLS OF REAL ESTATE.
- II. WILLS OF PERSONAL ESTATE.
- III. WILLS RELATING TO THE TRADE OF TESTATOR.
- IV. WILLS OF REAL AND PERSONAL ESTATE AND RE-LATING TO TRADE OF TESTATOR.
- V. WILLS AND CODICILS OF A MISCELLANEOUS AND SPECIAL NATURE.

#### I. WILLS OF REAL ESTATE.

1.

# Will of large Freeholds.

Of large freehold property for the benefit of wife and children, with all usual powers, &c.

Commencement LXXIII. 1. 2. Devise of freeholds to uses LXXX. 4. To the use that wife may receive an annuity with necessary powers LXXXIII. 7. And subject thereto, to trustees for a term of one thousand years. 4. 2. And after expiration of term 3. To eldest son for life XCIV. 3. To trustees to preserve contingent remainders 4. To sons of eldest son in tail male 6. To second third and other sons for life, trustees to preserve, to sons of second third and other sons in tail male 8. 9. To eldest daughters of testator for life, to sons of eldest daughter in tail male, to second and other daughters for life, to their sons respectively in tail male, to sons of sons in tail general, to sons of daughters

in tail general, to daughters of eldest and other sons in tail general, to daughters of eldest and other daughters in tail general, to trustees to preserve, 23-33. To nephew of testator for life 3. To trustees to preserve 4. To sons of nephew (a) in tail male 6. To testator's right heirs LXXXIII. 6. Trusts of term of one thousand years LXXXIV. 3. First to raise money for debts and legacies LXXXV. 1. Direction that real estate may be resorted to, but that it shall be indemnified LXXV. 4. Upon further trusts to raise annuity to wife LXXXVI. 16. And portions for younger children XCV. 1. Provisions for maintenance and advancement XCVII. XCVIII. 2. Proviso that the trustees shall (subject to the trusts) permit remainder man to receive the rents LXXXVI. 17. Proviso for cesser of the term 18. Power to tenants for life and trustees during minority to lease for twenty-one years CXXXVII. 3. CXLI. To lease for three lives CXXXVII. 3. CXLII. To grant building leases CXXXVII. 3. CXLIII. Power to tenants for life to jointure CXLVIII 1-3. To portion younger children 4.5. Power for trustees during minority to appoint stewards CL. Power to trustees to make partition **CXXXVIII.** 1. 2. 4. 5. (b) And to sell and exchange 1. 3. 4. (b) 5. Devise of trust and mortgage estates CLXI. Power to appoint new trustees CLVI. 1. 2. Appointment of executors and guardians CLXIII. 1.3.4. Execution and attestation CLXIV. 1. 3.

(b) If powers for partition, and for sale and exchange, are both inserted, these clauses need not be twice repeated.

<sup>(</sup>a) These limitations should of course be extended, shortened, Practical dior transposed to suit the circumstances of the case: the same rection. forms will serve for all kinds of real property and for all devisees.

2

Of freeholds, &c. in favour of wife and children already born.

## Will of Freeholds of Moderate Value.

Commencement LXXIII. 1. 2. Devise of dwelling house furniture and effects to wife for life LXXVII. 4.8. Direction as to inventory LXXVIII. 12. General devise of all the freeholds to uses LXXX. 4. To the use that wife may receive an annuity LXXXIII. 7. And subject thereto to trustees for a term of five hundred years 4, 2. And after expiration of term 3. To eldest son for life XCIV. 3. To trustees to preserve contingent remainders 4. To sons of eldest son in tail 6. To second son for life 19. To trustees to preserve 4. To sons of second son in tail 20. To third and other sons for life 21. To trustees to preserve 13. To sons of third and other sons in tail 22. To daughters as tenants in common in tail 10. To testator's right heirs in fee LXXXIII. 6. Trusts of term of five hundred years to secure annuity for wife and portions for younger children LXXXIV. 3. LXXXVI. 16. XCV. 1. 2. XCVII. XCVIII. LXXXVI. 17. 18. Power to tenants for life and trustees in minority to lease for twenty-one years CXXXVII. 3. CXLI. Power to tenants for life and trustees during minority to grant building leases CXXXVII. 3. CLXIII. Powers to tenants for life to jointure CXLVIII. 1-3. Power for tenants for life to portion younger Power to trustees during minority to appoint children 4. 5. stewards 'CL. Powers to trustees of sale and exchange CXXXVIII. 1.3—5. Power to appoint new trustees CLVI. 1, 2. Appointment of executors (a) and guardians CLXIII, 1. 3. 4. Execution and attestation CLXIV. 1. 3.

Executors.

<sup>(</sup>a) Executors need not be appointed to a will of lands only; it very rarely happens, however, that the property consists solely of realty, See Doe dem Ash v. Calvert 2 Camp. N. P. C. 389.

#### Will of Freeholds of Moderate Value.

Commencement LXXIII. 1.2. Devise of freeholds to uses To the use that wife may receive an annuity 7. LXXXIII. 1. And subject thereto, to trustees for five hundred years 4. 2. And after expiration of term 3. To first and other sons successively for life XCIV. 12. To trustees to preserve contingent remainders then to grandsons successively in tail 14. To daughters as tenants in common in tail 10. To testator's right heirs in fee. LXXXIII. 6. (for references to the usual powers, appointment of executors and guardians, execution and attestation, see ante p. xl.)

Of freebolds in favour of wife; and children not in existence at the time of the will

4.

## Will of a Married Woman.

Recital of settlement creat-Commencement LXXIII. 1. 2. ing power over freeholds LXXIV. 9. That testatrix has issue Vol. I. B. 46 a. Exercise of power over freeholds that freeholds shall be to the uses following LXXXI. 1. 3. 8. To such of the children of the marriage as husband shall appoint LXXXIII. 11. And in default of appointment 12. To the use of son for life XCIV. 3. Remainder to his sons in tail 6. Remainder to the use of his daughters as tenants in common in tail with cross remainders 10. Remainder to the use of second and other sons for life 8. Remainder to their sons in tail 9. Remainder to their daughters as tenants in common in tail 10. Remainder to the use of testatrix's daughters as tenants in common for And as to their respective shares to their sons in tail 42. Remainder to their daughters as tenants in common in tail 10. General limitation to trustees to preserve LXXXIII 28. accumulation clause (real estate) CIII. 1.2. Power of jointuring and charging with portions to the tenants for life CXLVIII. 1-4. Power of leasing CXLI. And sale and exchange CXXXVIII. 1. 3-5. Trustee clauses CLVI. 1. 2. Execution and attestation CLXIV. 1. 3.

By a married woman apfor the benefit of children. with special limitations.

Of real estate by a married womanexercising powers in favour of her daughters and their issue, &c.

## Will of a married Woman.

Commencement LXXIII. 1, 2. Recital of indenture giving the power LXXIV. 9. Exercise of power LXXXI. 1. That trustees shall stand seised of lands 6. Upon trust to raise a certain sum, and to pay the same to eldest daughter XC. 25. And subject thereto, to pay rents to the separate use of second daughter LXXXVI. 11. And after her decease, to the use of her eldest son for life LXXXIII. 8. Then to nephew in fee, but if he shall have no son who shall attain twenty-one 16. Upon trust to pay rents to the separate use of eldest daughter LXXXVI. 11. And after her decease to the use of her eldest son for life LXXXIII. 8. Then to second son in fee 5. And then to testatrix's right heirs 6. Further exercise of power LXXXI. Charge of such legacies on lands as testatrix shall give in a codicil 7. Trustee clauses CLXII. CLVI. 1. 2. Appointment of executors CLXIII. 1. Execution and attestation CLXIV. 1. 3.

6.

Of real estate to trustees to settle, as to one part, to uses for the benefit of wife and eldest son, &c. and as to the other part, to uses for the benefit of second son, &c.

Will of large Freeholds devising them to Trustees to settle.

Commencement LXXIII. 1. 2. Devise of lands to trustees LXXXI. 1. As to one part thereof LXXXIII. 26. Upon trust to settle to certain uses LXXXVI. 7. To the use that wife may receive rent-charge in bar of dower LXXXIII. 7. And subject thereto 4. To the use of trustees for a term of one thousand years, and after expiration thereof 2. 3. To eldest son for life, and after his decease XCIV. 3. 5. To his first and other sons in tail male 6. Remainder to second son for life 19. Remainder to his first and other sons in tail male 20. Remainder to third and other sons for life 21. Remainder to their first and

other sons in tail male 22. Remainder to sons of testator's eldest and other sons in tail general, according to their respective seniority 26. Remainder to trustees during the life of testator's eldest daughter, upon trust to apply rents for her separate use 37. Remainder to her first and other sons in tail male 38. Remainder to them in tail general 27. Remainder to her daughters as tenants in common in tail with cross remainders 10. Remainder to second, third, and other daughters, and their children in the same manner 39. Remainder to testator's right heirs LXXXIII. 6. Declaration to be inserted in settlement of trusts of term LXXXIV. 6. Trust to secure annuity LXXXVI. 16. And portions for younger children XCV. 1. 2. And as to the other part thereof LXXXIII. 27. Upon trust to settle the same LXXXVI. 7. To the use of trustees for one thousand years LXXXIII. 2. Remainder to second son for life XCIV. 19. Remainder to his first and other sons in tail male 20. Remainder to third and other sons for life 21. Remainder to their sons in tail male 22. Remainder to eldest son for life 17. Remainder to his first and other sons in tail male 18. Remainder to sons of testator's eldest and other sons in tail general according to their respective seniority 26. Remainder to daughters of testator's sons in tail according to their respective seniority 28. Remainder to trustees during the lives of testator's second and other daughters to pay the rents to their separate use, remainder to their first and other sons in tail male 39. To their daughters as tenants in common in tail male with cross remainders 10. Remainder to trustees for the life of testator's eldest daughter to pay rents to her separate use 37. mainder to her sons and daughters as before 38. 10. Remainder to testator's right heirs LXXXIII. 6. Direction (a) that

<sup>(</sup>a) There will be little difficulty in adapting the forms referred Practical dito the circumstance of an executory conveyance; thus, in the clause, instead of "Provided always that if by virtue &c." say, tlement. "And in the said settlement shall be contained a proviso that if by virtue, &c.;" the remainder of the clause will be the same. Indeed, the more full the directions for a settlement are, the less hazard and difficulty will occur.

shifting clause shall be inserted, to prevent any one son taking all the property, if there is any other son CLVII, a. 1. 2. Similar direction for daughters CLVII. a. 1.2. Declaration to be inserted in settlement of the trusts of term LXXXIV. 6. Upon trust as an auxiliary fund for the payment of wife's rent-charge and children's portions XC. 30. Provision for maintenance and advancement XCVII. XCVIII. Settlement to contain (a) power for eldest son and other tenants for life of first settled estates to jointure CXLVIII. 1.3. Power for eldest son and other tenants for life to charge the same estates with portions 4. Power for second son and other tenants for life of the secondly settled estate to charge with jointures CXLVIII. 1. 3. Power forsecond son and other tenants for life to charge the same estates with portions CXLVIII. 4. Declaration as to amount of jointures and portions on firstly settled estates 5. Similar declaration as to secondly settled estates 5. Powers to lease for twenty-one years. and for building to be contained in settlement CLIX. 3, And a power of sale and exchange 2. And all other necessary powers and clauses 5. Appointment of executors and guardians to children CLXIII. 1. 3. Bequest of legacies according to the circumstances. Power for executors to compound debts LXXV. 6. Devise of mortgage and trust estates CLXI. Trustee clauses CLVI. 1.2. Execution and attestation CLXIV. 1.3.

7.

Of real estate to trustees to wife for life, then to sell for the benefit of children, brother, and his children, sister and her children.

Will of monies to arise from Real Estate, partially in favour of Brothers and Sisters of Testator.

Commencement LXXIII. 1. 2. Devise of real estate to trustees LXXX. 1. Upon trust to pay rents to wife during widowhood LXXXVI. 11. And after her death or marriage to sell 1. And invest the monies to arise from the sale, and vary

Variation.

<sup>(</sup>a) The only variation in the usual form will be,
"And in the said settlement shall be contained a power for &c."

the same XC. 1. And stand possessed of the trust monies upon trusts hereinafter declared LXXXIV. 5. In trust for testator's children as wife shall appoint, and in default CVI. 1. To all the children as tenants in common 2. Hotchpot survivorship, maintenance, and advancement clauses 3. 4. CVII. CVIII. And if no children trust monies shall be CXXVIII. 1. As to one moiety thereof. upon trust to pay the interest to testator's brother for life XC. 20. And after his decease the said moiety to be upon the same trusts for the benefit of his children as are declared in fayour of testator's children CXIV. 2. And if there shall be no children CV. 7. The said moiety shall be upon the same trusts as are declared of the other moiety CXVI. 2. other moiety of the said trust monies, upon trust to pay the interest thereof to the separate use of testator's sister for her life XC. 7. And after her decease, upon the same trusts for the benefit of her children as are declared in favour of testator's children CXIV. 2. And if there shall be no children CV. 7. The said moiety shall be upon the same trusts as are declared of the other moiety CXVI. 2. And if there shall be no children either of brother or sister CV. 7. To persons entitled under the Statutes of distribution XC. 22. Devise of mortgage and trust estates CLXI. Trustee clauses CLVI. 1. 2. Execution and attestation CLXIV. 1. 3.

Of real estate providing for thebankruptcy of person to take under it.

# Will Providing for the Bankruptcy of Devisee.

Commencement LXXIII. 1. 2. Devise of real estate to uses LXXXIII. 1. To the use that wife may receive annuity 7. To trustees during the life of A B to preserve contingent remainders XCIV. 37. And upon trust until he shall assign or commit an act of bankruptcy, &c. to pay rents and profits to A B, but if A B shall assign or commit an act of bankruptcy, &c. XCII. Upon trust to pay rents and profits to wife of A B, she supporting the children XC. 23. "And after the decease of A B," to his sons in tail XCIV. 6. And in default of issue to testator's right heirs LXXXIII. 6. Devise of trust and mortgage estates, execution and attestation as ante. p. XLV.

9.

Of an estate in remainder.

Will of an Estate in remainder.

Commencement LXXIII. 1. 2. Recital of testator being entitled to estate in remainder LXXIV. 11. Devise thereof to A B in fee LXXVII. 1. Execution and attestation CLXIV. 1. 3.

10.

Of estate which testator has contracted to purchase. Will of Estate Contracted for.

Commencement LXXIII. 1.2. Recital of contract LXXIV. 7. Devise thereof in fee LXXVII. 3. Execution and attestation CLXIV. 1.3.

# Will of Real Estate Devising it to Trustees to Sell.

Commencement LXXIII. 1.2. Devise of real estate to trustees LXXX. 1. Upon trust to sell LXXXVI. 1. And stand ceeds for the possessed of proceeds LXXXIV. 5. Upon trust to invest and and daughter, vary XC. I. And pay the interest to wife for life, she to support daughter XC. 23. n. (e). And after her decease to daughter for her separate use XC. 7. And after her decease to her children equally CVI, 2. Provisions for maintenance and advancement CVII. CVIII. And if no child CV. 7. To executors of testator XC. 19. Provision for maintenance of daughter, and advancement CXII. 1. 2. Trustee clauses CLVI. 1. 2. Appointment of executors CLXIII. 1. 3. Execution and attestation CLXIV. 1.3.

Of real estate devising it to trustees to sell. and stand possessed of probenefit of wife

#### II. WILLS OF PERSONAL ESTATE.

1.

# Will of Monies and Personal Estate.

Commencement LXXIII. 1. 2. Bequest of personal estate dren and their to trustees LXXX. 6. Upon trust to pay debts LXXXV. 3. shares of And as to the residue thereof to invest and vary securities XC. daugnters to be for their se-1. And stand possessed of the securities LXXXIV. 4. trust for all the children to vest at twenty-one, &c. CVI. 2.

Of personal estate in fayour of childaughters to Upon parate use.

Provision that if any son die his share shall go to his issue, and if no issue to the other children of testator CXXVII. 1. 2. Provision that shares of daughter shall be to their separate use, and after their decease to their issue 3. And if no issue, to the other children of testator 4. Provision for the maintenance of the children out of the interest of their shares and accumulation of the residue CXI. Provision for the advancement of children CVIII. Trustee clauses CLVI. 1. 2. Appointment of executors CLXIII. 1. 3. Execution and attestation CLXIV. 2. 3.

2.

Of personal
estate in favour of children: direction
to raise sums of
pounds
for each of
them as they
attain twentyone.

# Will of Monies and Personal Estate.

Commencement LXXIII. 1. 2. Bequest of personal estate to trustees upon trusts hereinafter declared LXXX. 6. To convert into money such part as does not already consist of money XC. 4. And stand possessed of all the monies upon trusts LXXXIV. 5. To pay debts LXXXV. 3. Invest the residue and vary the securities XC. 1. And stand possessed thereof LXXXIV. 5. Upon trust when eldest son attains twenty-one, to raise sum of pounds for him CXXII. 2. And when the other sons and daughters attain twenty-one, to raise the sum of pounds for each of them 3. And if the funds shall be unexhausted, the residue to the children equally 4. And if no children to the persons taking under the Statutes of Distributions XC. 22. Provisions for the maintenance and education of the children from their shares and accumulation of the residue CXI. Advancement CX. 2. Trustee clauses CLVI. 1. 2. ment of executors CLXIII. 1. 3. Execution and attestation CLXIV. 2. 3.

#### Will of a Sum of Stock.

Commencement LXXIII. 1. 2. Gift of sum of stock to either born or trustees(a) upon trusts LXXXII.2. Trust to vary securities and stand possessed thereof XC. 1. In trust to pay interest to daughter for life for her separate use 7. And after her decease to her children as she shall appoint CVI. 1. And in default to all equally 2. Hotchpot, survivorship, maintenance, and advancement clauses 3. 4. CVII. CVIII. If no children to testator's executors as personal estate CXXVIII. 1. CXXX. 4. Appointment of executors CLXIII. 1. 3. Execution and attestation CLXIV 2.3

Of stock in favour of daughter and her children, either born or hereafter to be born.

4.

# Will of Reversionary Interest in Stock.

Of reversionary interest in stock.

Commencement LXXIII. 1. 2. Legacies, &c. according to the circumstances. Recital of title to reversionary interest in stock LXXIV. 5. Bequest of stock to trustees (a) LXXXII. 2. Upon trust to invest and vary XC. 1. Trusts for the benefit of wife and children, appointment of executors, execution and attestation as in the last form.

d

VOL. 11.

<sup>(</sup>a) In these and the succeeding forms, the usual trustee clauses CLXII. CLVI. 1. 2. should be introduced before the appointment of executors.

Of monies to arise from the sale of lands.

## Will of Monies to arise from Sale of Lands.

Commencement LXXIII. 1. 2. Recital of indenture whereby premises were conveyed to trustees to sell, and to apply the proceeds as testator should appoint LXXIV. 8. Exercise of power in favour of trustees (a) LXXXII. 1. LXXXII. 3. Upon trust to invest and vary XC. 1. Trusts for benefit of wife and children as in p. xlix. Execution and attestation CLXIV. 2. 3.

6.

Bequest of furniture, plate, and jewels upon trusts for wife, and then to go as heir-looms.

#### Will of Furniture, Plate, and Jewels.

Commencement LXXIII. 1.2. Directions as to payment of debts and legacies. Bequest to trustees(a) of furniture, plate, and jewels upon trusts to permit wife to use the same during her life XCIII. 1—3.9. 10. And after her death to permit the same to go as heir-looms 4.5.11. Power to trustees to repair furniture 6. To exchange 7. And to alter 8. Appointment of executors CLXIII. 1. Execution and attestation CLXIV. 2.3.

7.

Of stock where testator has a life interest, with power to appoint to his children.

## Of Stock where Testator has a Power.

Commencement LXXIII. 1. 2. Recital of indenture settling the stock LXXIV. 10. Exercise of power in favour of trustees (a) LXXXI. 1. 4. Trusts to invest and vary, and stand possessed

<sup>(</sup>a) See p. xlix. n. (a).

of trust monies XC. 1. LXXXIV. 5. Upon trust for children CV. 1-3. Provision for survivorship maintenance and accumulation CVI. 4. CVII. CIX. For advancement CVIII. And if no child to sink into residue CV. 7. 8. Trusts of residue according to the circumstances. Appointment of executors CLXIII. 1. Execution and attestation CLXIV. 2. 3.

8.

#### Will providing for Bankruptcy of Legatee.

Commencement LXXIII. 1.2. Bequest of personalty to trustees (a) LXXX. 6. To invest and vary XC. 1. And stand possessed thereof LXXXIV. 5. Upon trust until bankruptcy, &c. to pay the interest to AB for his life, but if such event should occur XCII. Upon trusts for the benefit of others according to the circumstances. Execution, and attestation CLXIV. 2. 3.

Of personal estate, providing for the bankruptcy of per-

9.

# Will providing for a Single Child.

Of personal estate, provid-

Bequest of stock to trustees child. Commencement LXXIII. 1. LXXXII. 2. Upon trust for son absolutely CV. 9. Provisions for the maintenance and advancement of a single child CXII. 1. 2. Power to change trustees, and clauses for their indemnity and reimbursement CLXII. CLVI. 1. 2. Appointment of ex-Execution and attestation CLXIV. ecutors CLXIII. 1. 3. 1. 3.

<sup>(</sup>a) See p. xlix. n. (a).

#### III. WILLS RELATING TO THE TRADE OF TESTATOR.

1.

Where testator has carried on trade in copartnership, devise and bequest to trusof sons, and to pay annuity to wife out of profits of trade.

Will where the Trade has been carried on in Copartnership.

Commencement LXXIII. 1. 2. Recital of carrying on trade Directions for payment of debts and bequest of tees for benefit LXXIV. 2. legacies according to the circumstances. Devise and bequest of trade to trustees CXXX. 1. Upon trust for benefit of sons 2-6 a. Powers to carry on trade CXXX. 8-16. And to dissolve partnership, and to enter into a new one CXXXIII. Power to trustees to accept security from partners for the payment of the value of testator's share CXXXIV, 1. Trusts of profits CXXXV. 1. To pay annuity to wife thereout 3. And subject thereto to accumulate 4. Provision that trustees shall make an annual account of stock of trade CXXXVI. Bequest of residue. appointment of executors, execution and attestation, as in the preceding forms.

2.

Where author rity is given trustees to. carry on trade. Will where Trustees are to carry on Trade.

Commencement LXXIII. 1.2. Recital of trade being carried on LXXIV. 3. Authority to trustees to carry on trade with all necessary powers CXXX. 8-16. Losses to be paid out of profits and then out of personal estate 17. Profits to go as residue of personal estate CXXXV. 2. Provision for assigning business to sons on attaining twenty-one CXXXII. 1. Trusts of residue of personal estate according to the circumstances. Trustee clauses CLVI. 1. 2. Appointment of executors CLXIII. 1. 3. Power to compound debts LXXV.6. Execution and attestation CLXIV. 2. 3.

#### Will where Trade is in certain events to be sold.

Commencement LXXIII. 1.2. Bequest of trade to trustees upon trusts CXXX. 1. Declaration of trusts thereof CXXX. 7. Upon trust to pay annuity out of the profits to wife CXXXV. 3. And invest the residue and vary the securities 4. And stand possessed of the fund upon the trusts of residuary estate LXXXIV. 4. "And subject to the trusts hereinbefore declared concerning the same" Declaration that trustees shall stand possessed of the trade CXXX. 7. Upon trust to carry on the same until eldest son of testator shall attain a certain age, and if he die before that age or decline the business, until second son shall attain a certain age; and if second son should die or decline; upon trust to sell the business and stand possessed of proceeds upon the trusts of the residue 2. 3. LXXXIV. 4. But if either son should attain twenty-one, to convey business to him CXXX. Power to trustees for carrying on the trade 8—16. Provision as to the costs of conducting the trade 17. Trusts of residue according to the circumstances. Appointment of executors, execution and attestation as in the last form.

Bequest of trade to trustees for the benefit of wife and children, if son shall not engage therein the same to be

# IV. WILLS OF REAL AND PERSONAL ESTATE, AND RELATING TO THE TRADE OF TESTATOR.

1.

# Will of Moderate Real and Personal Estate.

Devise and bequest of real and personal estate to trustees to sell and convert into money, and stand possessed of the proceeds for the benefit of wife and children and legacies.

Commencement and direction as to burial LXXIII. 1. 3. Bequest of furniture &c. to wife absolutely LXXVII. 8. Bequest of various legacies 16, 17, 21, 26. Appointment of executors and bequest to them LXXIII. 5. LXXVII. 15 a. Devise of all testator's real property to trustees LXXX. 1. Bequest of all the leasehold and personal estate to same trustees 7. Declaration of trusts of real and leasehold estate LXXXIV. 1. Upon trust to sell LXXXVI. 1. And convert personal estate into money XC. 4. Declaration of trusts of money to arise from sale and of the personal estate LXXXIV. 5. Upon trust to pay debts and legacies LXXXV. 3. Then to raise a certain sum the interest of which will amount to pounds a vear And invest and vary such sum And pay dividends to wife for life or widowhood, and smaller sum if she marry, and raise deficiency from other sums XC. 24. And as to the residue To invest and vary the same (by reference) XC. 3. And stand possessed of first sum (subject to the annuity to wife) and of the other sums LXXXIV. 5. In trust for all the children of testator at a certain age CVI. 2. Proviso for double portion for eldest son CXVII. Provision for maintenance and advancement CVII. CVIII. Trusts of shares of daughters marrying without consent CXVIII. 1. 2. or 3. 4. Provision for the payment of annuity and maintenance before investment of monies CXIII. Accumulation clause CIX. Devise of mortgage and trust estates CLXI. Trustee clauses CLVI. 1. 2. ment of guardians CLXIII. 1.3. Execution and attestation CLXIV, 1, 3.

# Will of Real and Personal Estate, with Provision as to the Devise and Trade of Testator.

Commencement LXXIII. 1. 2. Bequest of legacies accord- to trustees to ing to the circumstances. Devise and bequest of real and vert into mopersonal property to trustees upon the following trusts (that is to say) LXXX. 1. 6. Upon trust to sell the real estate the proceeds LXXXVI. 1. And convert the personal estate into money of wife and XC. 4. And stand possessed of the proceeds thereof LXXXIV. their issue. 5. Upon trust to pay debts and legacies LXXXV. 3. In the with provisions respectnext place to raise the sum of pounds and invest the same ing the trade and vary the securities with wife's consent. And pay the interest thereof to wife during widowhood And if she shall marry, a smaller sum XC. 24. And after her decease or marriage but in case of her marriage, subject to the smaller annuity, pounds shall remain upon the trusts of the the sum of residue 13. LXXXIV. 4. Provision for wife to be in bar of dower &c. XC. 16. As to residue CLX. 7. Trust to invest and vary And stand possessed of the trust monies LXXXIV. 2. In trust for all the children CV. 1. Provision that if sons shall die before twenty-one years their share shall go to his issue CXXVI. Clauses for maintenance education and accumulation CVII. CIX. And advancement CVIII. Bequest of trade to trustees CXXX. 1. Upon trust to conduct the business until the eldest son attain a certain age and if he die before that age to second son, and if second son should die, to sell and stand possessed of proceeds in trust for testator's executors, but if either son should attain twenty-one years, then to assign the trade to such son; proviso that eldest son shall give security to admit second son to joint share in concern 2-6. Powers to trustees to manage trade 8-16. Appointment of executors LXXIII. 5. Trustee clauses (see last form) and power to compound debts LXXV. 6. Execution and attestation CLXIV. 1. 3.

bequest of real and personal property sell and conney, and stand for the benefit of testator. ,

Of real and personal estate providing for wife only son and daughter.

#### Will of Moderate Real and Personal Estate.

Commencement LXXIII. 1.2. Legacy to wife to be paid directly LXXVIII. 8. Bequest of plate and furniture to wife for life LXXVII. 19. Direction as to inventory LXXVIII. 11. 12. "And after her decease" to sink into residue CV. 8. vise of real estate to uses LXXX. 4. To the use of trustees for five hundred years LXXXIII. 2. To the use of son in fee 5. Declaration of trusts of term LXXXIV. 3. Upon trust to raise sufficient to pay debts and legacies LXXXV. 1. Then to raise the sum of fifteen thousand pounds XC, 25. And invest and vary the securities 1. And stand possessed of the same for daughters on attaining twenty-one or marriage LXXXIV. 5. CV. 11. vision for maintenance and accumulation CVII. CIX. Provision for advancement of son CVIII. Provision for cesser of term CI. Power of leasing to the trustees during minority of son CXXXVII. 3. CXLI. Accumulation clause for real estate CIII. 1.2. Bequest of personal estate to trustees LXXX. 6. Upon trust to sell and convert into money XC. 4. And thereout to pay debts and legacies LXXXV. 3. Appointment of executors and guardians CXLIII. 1, 3. Trustees clauses CLVI. 1, 2. Execution and attestation CLXIV. 1. 3.

4.

Bequest of household goods to wife, devise of real eatate, to sons in fee with executory devises, if they die under twentyone years, and if no issue to trustees to Will of small Personal Estate and large real Estate.

Commencement LXXIII. 1.2. Bequest of household goods &c. to wife absolutely LXXVII. 8. Devise of real estate to uses LXXX. 4. To the use of eldest son in fee, but if he shall die under twenty-one LXXXIII. 16. To the use of second son in fee, but if he shall die under twenty-one LXXXIII. 16. To the use of a third and other sons in fee, subject to a similar executory devise 17. "And in default of issue" to trustees to sell the real estate

Declaration of trusts of monies arising from sell and stand LXXXVI. 1. sale upon the same trusts as are declared of residue LXXXIV. 4. Accumulation clause for real estate CIII. 1. 2. Bequest of residue to trustees CLX. 4. Upon trust to convert the same into money XC. 4. And in the first place pay debts LXXXV. 3. In the next place raise such a sum of money, the dividends of pounds per annum XC. 24. Invest which shall produce and vary the same 1. And pay the interest to wife for her life And after her decease stand possessed of the sum upon trusts hereinafter declared of the residue of the personal estate LXXXIV. 4. Provision for wife to be in bar of dower XC. 16. As to the residue CLX, 1 or 4. Upon trust to invest and vary XC. 1. And stand possessed of the same LXXXIV. 5. In trust for all the children (except the eldest son) as tenants in common CV. 13. "And in default of such issue," to wife for life XC. 20. "And after her decease," to eldest son CV. 15. Provision for the maintenance of the younger children CVII. And the accumulation of the residue CIX. Provision for the ad-Devise of trust and vancement of younger children CVIII. mortgage estates CLXI. Trustee clauses CLVI. 1. 2. tion and attestation CLXIV. 1. 3.

proceeds and residue to pay debts, and for the benefit of vounger children.

5.

# Will of Personal Estate, with Provisions as to the Trade Bequest of of Testator.

Commencement LXXIII. 1. 2. Bequest of household goods to wife absolutely LXXVII. 8. Recital of policy of insurance LXXIV. 1. Bequest of monies arising therefrom to trustees LXXXII. 5. Upon trust to invest the same and vary the securi- and disposing ties XC. 1. And stand possessed of the trust monies upon the trusts hereinafter declared LXXXIV. 5. Recitals of the carrying on a trade and desire to have it continued for benefit of age with prowife and children LXXIV. 3. 4. Devise and bequest of trade sale of the

household goods to wife, and of monies arising from policy of insurance to trustees upon trusts bereinafter mentionof trade to trustees until sons shall attain a certain

trade to any of the sons. and if they die or refuse to purchase. to any other purchaser, and declaration of trust, of proceeds of sale monies arising from policy and residue of personal estate for the benefit of wife and children, and their issue.

and messuages &c. in which it is carried on to trustees upon trusts hereinafter declared (that is to say) CXXX. 1. Upon trust to carry on the same until voungest son attain twenty-one 6 a. Powers to trustees to carry on the business 8-16. Declaration that the trustees shall stand possessed of profits of trade &c. upon the trusts of the residue CXXXV. 1. 2. Provision that sons shall be employed in carrying on the trade CXXXI. When youngest son shall attain twenty-one, to offer it for sale to eldest son, and if he refuse to second son, and if he refuse to youngest Provision that sons shall pay nothing for goodwill. Power to take security for purchase money, and if all the sons die or refuse, then to sell the trade to any other purchaser CXXXII. 2-4. And stand possessed of proceeds of sale upon trusts hereinafter mentioned LXXXIV. 1. Declaration that all losses shall be borne out of the profits and personal estate CXXX.17. And as to the monies to arise from the said policy, the monies to arise from the profits of the business and from the sale thereof, and as to the residue of the personal estate, trustees shall stand possessed thereof upon trusts hereinafter declared LXXXIV. 5. Upon trust to convert such part of the residue into money as does not consist thereof XC. 4. And stand possessed of all the monies LXXXIV. 5. Upon trust to pay debts and legacies LXXXV. 3. And invest the residue and vary the securities XC. 1. And stand possessed of the trust monies LXXXIV. 5. Upon trust to raise an annuity for wife, who shall thereout maintain the children XC, 23. And stand possessed of the residue of the trust monies, and after her decease of all the trust monies upon trusts hereinafter declared LXXXIV. 5. trust for all the testator's children equally CV. 1. The shares of sons to be for their absolute use 2. The shares of the daughters to their separate use 3. Daughters' receipts sufficient discharges 3. "And after the decease of such respective daughter her said share in the said trust monies stocks funds and securities shall remain and be" In trust for such of her children as she shall appoint, and in default of appointment, to all equally CVI. 1. 2. And if she shall have no child, in trust for the daughter, her executors and administrators CV. 7.9. Power to daughter to appoint interest of her share to her

husband after her decease CXIX. Provisions for the maintenance, accumulation of residue, and advancement of daughters' children CVII. CIX. CVIII. Provisions for the maintenance and advancement of testator's children CVII. CVIII. Accumulation clause CIX. Devise of trust and mortgage estates CLXI. Appointment of executors and guardians of children CLXIII. 1. 3. Trustee clauses CLXII. CLVI. 1. 2. Execution and attestation CLXIV. 1. 3.

6.

#### Will of Freeholds and Renewable Leaseholds.

Commencement LXXIII. 1. 2. Clauses as to the payment of tees upon debts and legacies. Devise of freeholds according to the circum- are declared of stances. Bequest of renewable leaseholds to trustees LXXXIX. Upon trusts to perform covenants, and endeavour to effect renewals 2. 3. And other usual trusts 4-6. And stand possessed thereof upon same trusts as have been declared of freeholds 6-8. Or other trusts according to the circumstances. Execution and attestation CLXIV. 1. 3.

Bequest of renewable leaseholds to trussame trusts as

7.

## Will of Real and Personal Estate where the Legacies are numerous.

Commencement LXXIII. 1. 2. Devise of messuage to two the real estate nephews as tenants in common LXXVII. 2. Bequest of next presentation to a third nephew 7. Bequest of horse to friend relations. Bequest of a sum of money to niece payable by instalments 11. Bequest to servants 16. And of mourning to all testator's nephews and nieces 17. Bequest of various other legacies 28. Appointment of executors, and bequest to them LXXIII. 5. LXXVII. 15 a. Execution and attestation as in the last form.

Of real and personal estate where numerous legacies are given, and is parcelled out to different

Where various legacies are left, and special directions are given as to their payment. Will where there are Numerous Legacies.

Commencement LXXIII. 1.2, Bequest of legacies LXXVII. 28. Charge of legacies on real estate LXXVIII. 1. And direction that legacy shall carry interest 2. And see various other directions as to legacies LXXVIII. 3—17.

#### V. WILLS OF A MISCELLANEOUS AND SPECIAL NATURE.

1.

Of real estate in favour of a natural child.

# Will in Favour of Natural Child.

Commencement LXXIII. 1. 2. Devise to such uses as he shall appoint, and in default thereof CXXIX. 4. To himself in tail 4. Remainder to the testator's right heirs 4. Appointment of executors CLXIII. 1. Execution and attestation CLXIV. 1.3.

2.

Another will of the same nature.

Will in Favour of Natural Child.

Commencement LXXIII. 1. 2. Devise of estate to trustees upon trusts for the benefit of natural child and heirs of testator CXXIX. 4. Appointment of executors CLXIII. 1. Execution and attestation CLXIV. 1. 3.

# Will in Favour of Natural Child.

Of a sum of stock in favour of natural child

Commencement LXXIII. 1. 2. Gift of stock to trustees LXXXII. 2. Upon trust to vary securities XC. 1. And stand possessed of dividends LXXXIV. 5. Upon trusts for benefit of natural child and heirs of testator CXXIX. 5. Accumulation clause CIX. Provision for issue of child if he shall not attain twenty-one (a) CXXVI. Trustee clauses CLXII. CLVI. 1. 2. Appointment of executors CLXIII. 1. Execution and attestation CLXIV. 2. 3.

4.

# Will in Favour of Natural Child.

Of sum of money in favour of natural child.

Commencement LXXIII. 1, 2. Appointment of executors CLXIII. 1. Bequest of a sum of money to them LXXXII. 1. Trust to stand possessed thereof LXXXIV. 5. Upon trust to invest and vary XC. 1. And stand possessed thereof LXXXIV. 5. Upon trusts for the benefit of child and heirs of testator CXXIX. 5. Accumulation clause CIX. Provision for issue of child (a) CXXVI. Trustee clauses CLXII. CLVI. 1. 2. Execution and attestation CLXIV. 1. 3.

<sup>(</sup>a) The clause referred to is adapted for children, but it is Practical diconceived no difficulty will be found in rendering it applicable rection to one child only.

In favour of wife, legitimate and illegitimate children. Will in favour of Legitimate and Illegitimate Children.

Commencement LXXIII. 1. 2. Bequest to wife of phaeton LXXVII. 22. furniture, &c. 8. and trinkets 24. Legacy to legitimate son in addition to his portion to be vested at twenty-one LXXVIII. 10 a. 4. Bequest to trustees of sum of money LXXXII. 1. To invest and vary securities XC. 1. Trusts for the benefit of natural children and their issue CXXIX. 6. 7. Provision that if natural(a) children shall die in testator's lifetime, then issue shall have their share CXX. Bequest of residue to legitimate son CLX. 2. 6. Power to change trustees and clauses for their indemnity &c. CLXII. CLVI. 1. 2. Appointment of executors and guardians of natural children CLXIII. 1. 3. Execution and attestation CLXIV. 2. 3.

6.

Providing for child or other person who is incapable from insanity or drunkenness to manage his own affairs. Will where Legatee is Incapable of Managing his Affairs.

Commencement LXXIII. 1.2. Directions as to payment of debts and legacies. Bequest to trustees of a sum of stock LXXXII. 2. Upon trust to pay dividends thereof for the maintenance of child or other legatee for his life XC. 26. Execution and attestation CLXIV. 2.3.

Practical direction.

<sup>(</sup>a) The clause referred to, as well as many others, will serve equally for legitimate and illegitimate children, by inserting the word "natural" before children when used for the latter. See post p. 277. n. (b).

7.

# Will authorising Trustees to cut Timber.

Where trustees are authorised

Commencement LXXIII. 1. 2. Devise of real estate to to cut timber. trustees for a term LXXXIII. 1.2. Upon trust to cut timber and apply the monies arising therefrom in paying charges on the estates, and the rest upon the trusts of residue of personal estate LXXXVI. 13. Proviso for cesser 18. Devise of real and bequest of personal estate according to the circumstances. Execution and attestation CLXIV. 1. 3.

8.

## Will authorising Trustees to Work Mines.

Where trustees are authorised

Commencement LXXIII. 1. 2. Devise of real estate to to work mines. trustees for a term LXXXIII. 1. 2. Upon trust to work mines and sell produce, and stand possessed of proceeds upon trusts thereinafter mentioned LXXXVII. Devise of real estate and bequest of personalty according to the circumstances. Execution and attestation CLXIV. 1. 3.

9.

# Will Devising Advowson.

Commencement LXXIII. 1. 2. Directions as to payment of trusts for benefit of sons and debts and legacies. Devise of advowson to trustees LXXXVIII. sons-in-law. 1. Upon trusts for the benefit of sons and sons-in-law, 2-6. Devise of other real estate and bequest of personal estate according to the circumstances. Execution and attestation **CLXIV.** 1. 3.

Devise of advowson upon

10.

Devise of advowson to trustees to present some person who will resign on the son of testator becoming qualified.

## Will Devising Advowson.

Commencement LXXIII. 1. 2. Devise of advowson to trustees LXXXVIII. 1. Upon trust to present a person under an honorary engagement to resign in favour of testator's son if he shall take orders 7. Execution and attestation as in the last form.

11.

Where personal estate is exempted from the payment of debts.

Will where Personal Estate is exempted from Payment of Debts.

Commencement LXXIII. 1. 2. Exemption of personalty from the payment of debts LXXV. 7. Devise of real estate to trustees for a term of years LXXXIII. 1. 2. Upon trust to pay debts LXXXV. 3. Devise of real and personal estate according to the circumstances. Execution and attestation CLXIV. 1. 3.

12.

Will devising an annuity to A B.

# Will Devising Annuity.

Commencement LXXIII. 1.2. Devise of annuity chargeable on land LXXIX. 1.2. with powers of distress and entry 3. Proviso that annuity shall cease in case of bankruptcy 4. Devise and bequest of real and personal estate according to the circumstances. Execution and attestation as in the last form.

13.

Will where Premises are Devised to Uses to Bar Dower.

Devise of premises to AB to uses to bar dower.

Commencement LXXIII. 1. 2. Devise of premises to uses to bar dower LXXXIII. 30. Execution and attestation CLXIV.

14.

Codicil Changing Trustees of Will.

Where trustees are changed.

Codicil CLXV. 1. 2. Execution and attestation 3. 4.

15.

Codicil where Lands Contracted for, since the Date of the Where lands contracted for Will are Devised.

are devised.

Codicil CLXVI.

16.

Nuncupative Will. CLXVII.

Nuncupative

. .

### ERRATA VOL. II.

P. 3, l. 5, from bottom, for "vendor" read "purchaser."
P. 52, l. 6, from bottom, for "them" read "it."
P. 81, l. 3, from bottom, dele the first "as."
P. 227, l. 19, margin, dele "to preserve."
P. 241, l. 5, from bottom, between "proper" and "shall," insert "they or he."
P. 361, l. 1, between "codicil" and "of" insert "to the last will and testament."

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## PRACTICE

OF

# CONVEYANCING.

### AGREEMENTS.

COMMENCEMENTS.

COMMENCE-MENTS.

T.

L

- (1) ARTICLES or MEMORANDUM OF AGREEMENT Commencement, date, made and entered into the day of Between and parties.

  [AB] (a) of &c. of the one part and [CD] of &c. of the other part.
- (2) ARTICLES OF AGREEMENT made and entered into the Other form.

  day of Between [AB] of &c. for himself (b)

  his heirs executors and administrators of the one part and

  [CD] of &c. for himself his heirs executors and administrators of the other part.

VOL. II.

<sup>(</sup>a) As to the description of parties, see Vol. I. 1.

(b) If these words are inserted here, they need not be re-Heirs, and exepeated throughout the instrument. As to when heirs and cutors executors are bound without being named, see Vol. I. 84. n.

I. COMMENCE-MENTS. Or AGREED this day of Between [AB] of &c. of the one part and [CD] of &c. of the other part.

Other form.

Between husband and wife and another. (3) Between [AB] of &c. and [Mary] his wife of the one part and [CD] of &c. of the other part.

Between AB by attorney and CD. (4) Between [principal] of &c. by [AB] of &c. his agent (a) [attorney steward or bailiff] lawfully authorised for this purpose of the one part and [CD] of &c. of the other part.

Between AB, CD, and surety. (5) Between [AB] of &c. of the first part [CD] of &c. of the second part and [surety] of &c. of the third part.

Between three.

(6) Between [AB] of &c. of the first part [CD] of &c. of the second part and [EF] of &c. of the third part.

Between trustees and another. (7) Between [AB and CD] of &c. (b) trustees or executors of the last will and testament of YY late of &c. deceased of the one part and [EF] of &c. of the other part.

Mutual covenants by each party with the other to perform the agreements to be performed by him. (8) It is witnessed (c) or now these presents witness that the said AB (or AB and CD) so far as relates to the observance and performance of such of the covenants and agreements hereinafter contained as are or ought to be observed and performed by him (or them) his (or their) [heirs] executors administrators and assigns [do hereby jointly for themselves their heirs executors and administrators and each of them] doth hereby [separately] for

Agent.

(a) No further notice of the agent need be taken throughout the agreement, except at the conclusion.

Practical direction. (b) It may be useful in agreements shortly to describe the characters in which the parties act, as it will dispense with the necessity of recitals to explain them, see Vol. I. p. 3. n. +.

Practical direction. (c) This commencement is recommended to be adopted in all agreements of importance, whatever may be the subject matter, as it will save much needless repetition. If it is employed, each subsequent clause will begin with the word, "That," as in the building agreement, and the agreement to submit disputes to arbitration, post.

himself his heirs executors and administrators covenant promise and agree with and to the said EF (or EF and GH) his (or their and each of their) [heirs] executors and administrators And the said EF (or EF and GH) so far as relates to the observance and performance of such of the covenants and agreements hereinafter contained as are or ought to be observed and performed by him (or them &c. as before) covenant promise and agree with and to the said AB (or AB and CD) his for their and each of their] [heirs] executors and administrators.

T. COMMENCE MENTS.

#### II.

### AGREEMENTS FOR THE SALE AND PURCHASE OF PROPERTY.

II. FOR THE SALE AND PURCHASE

(1) Whereas the said (purchaser) hath lately contracted That vendor with the said (vendor) for the absolute purchase of the hereditaments and premises hereinafter mentioned free from incum- premises. brances at or for the price or sum of Now these presents witness that in consideration of the Testatum pounds of lawful money of Great Britain and Ireland consideration to be paid to the said (vendor) at the time and in the manner of purchase hereinafter mentioned he the said (vendor) doth hereby for him- covenants to self his heirs (a) executors and administrators covenant and mises on or agree with the said (purchaser) his heirs and assigns that he the said (vendor) or his heirs together with all other necessary parties will on or before the day of next by such conveyances and assurances in the law as the said (purchaser) his heirs or assigns or his or their counsel shall require well and effectually convey and assure unto the said (wendor) his heirs or assigns or to such person or persons as he or they shall direct All that &c.

has contracted

OF PROPERTY.

whereby in money, vendor convey the prebefore the day of

<sup>(</sup>a) A covenant to convey lands runs with the land, and Heirs. the heir is therefore bound although he is not named, see Vol. I. 84. n.

4

TT. FOR THE SALE OF PROPERTY.

Covenant by purchaser to pay purchase money.

(2) And the said (purchaser) in consideration of the covenant AND PURCHASE hereinbefore contained on the part of the said (vendor) doth hereby for himself his heirs executors and administrators covenant and agree with the said (vendor) his heirs executors and administrators that he the said (purchaser) his heirs executors or administrators on the said day of next on having a good and effectual conveyance executed to him or them as aforesaid will pay unto the said (vendor) his executors administrators or assigns the sum of pounds being the full consideration money agreed to be given by the said (purchaser) for the purchase of the said hereditaments and premises.

III.

#### III.

House in town.

(1) ALL THAT (a) messuage or dwelling-house with the coach. house stable out-houses and yard thereto belonging with the appurtenances situate in street in the parish of and numbered in the said street with the appurtenances thereto belonging.

House in the country and grounds.

(2) ALL THAT messuage or dwelling-house with the coachhouse stable out-houses garden and orchard thereto belonging situate in the parish of in the county of and called [Ellis Mount] And all that meadow or field containing by computation acres or thereabouts thereto adjoining and the appurtenances.

together with furniture.

(3) Together with all the furniture and fixtures utensils goods chattels and effects therein contained and which are mentioned and described in the schedule and inventory hereunder written or hereunto annexed.

Parcels.

<sup>(</sup>a) For other descriptions of parcels, see Vol. I. E. p. 41. The description of parcels in agreements for sales and leases need not be so minute as in deeds, but should always be full and particular.

(4) ALL THAT [first] floor containing three rooms and a closet on the landing place and the back attic with the right AND PURCHASE hand coal cellar of the messuage or dwelling-house situate in street in the county of

Part of a bouse with use of kitchen and vard

(5) Together with the full use of the front kitchen and washhouse and vard of the said messuage or dwelling-house in common with the said (lessor) or occupier for the time being of the other part thereof and the privilege of fixing a bell at the and the privifront door of the said dwelling-house with wires extending to a bell, such part of the said dwelling-house and with such description on the handle of the said bell as the said [lessee] may think proper or Together with the privilege of putting the name and and the privilege of putting profession or trade of the said (lessee) on the front door of the name on door. said messuage or dwelling-house in such manner and form as he may think proper.

- (6) ALL THAT farm situate at &c. (describe it particularly Farm. as well as the land to be demised.)
- (7) ALL THAT piece or parcel of land situate &c. and the Piece of land, dwelling-house (or dwelling-houses erections and buildings) to be erected and built thereon.
- (8) Together with the joint use of the court or passage be- with use of hind the same in common with the occupiers of the adjoining houses.
- (9) All and all manner of tithes (a) as well great as small Tithes. which shall arise or which in any way belong to the said (lessor) within the said parish of
- (10) ALL THOSE the glebe lands belonging to the rectory of Glebe lands. the said parish Together with the garden barn and grounds thereto belonging.

<sup>(</sup>a) See other descriptions of tithes, Vol. I. p. 48.

III. FOR THE SALE OF PROPERTY.

(11) ALL THAT unfinished house or skeleton situate at &c. AND PURCHASE With the appurtenances.

Unfinished house. Shop.

(12) ALL THAT messuage or shop situate &c.

boughs lops tops bark and premises.

- Timber growing.
- (13) AND ALL the timber now growing thereupon.

Timbermarked for sale.

(14) ALL THOSE the timber (a) trees and other trees set out and marked for sale situate and being at (that is to hundred oak trees marked with the letter M sav) together with the lops tops and bark thereof And also hundred elm trees marked &c. Together with full power and authority for the said (purchaser) his servants agents and workmen to fell cut and carry away the said timber and other trees

and liberty to cut and carry it away,

Lifebolds.

(15) All that messuage situate at &c. now held by the said (vendor) for the life of (nominee or nominees) and the lives and life of the survivors and survivor of them under and by virtue of an indenture bearing date on or about the day of and made between (lessor) of &c. of the one part and the said (vendor) of the other part [and afterwards perfected by livery of seisin indorsed.]

Leaseholds for lives or life.

(16) All that messuage situate at &c. now held by the said (vendor) for the remainder of a term of vears from the (or for the remainder of a term of day of years if (nominees) of &c. or any or either of them should so long live) under and by virtue of an indenture bearing date on or about the day of and made between (lessor) of &c. of the one part and the said (vendor) of the other part.

Timber.

<sup>(</sup>a) It has been very lately decided that an agreement for the sale of growing underwood, as well as of other growing timber, must be in writing, under the 4th sec. of the Stat. of Frauds, Scorrell v. Boxall, 1 Yo. and Jerv. 396.

FOR THE SALE AND PURCHASE OF PROPERTY.

#### IV.

(1) First the said (vendor) (a) for himself his heirs executors to sell. and administrators agrees with the said (purchaser) (b) his heirs and assigns to sell And the said (purchaser) for himself his heirs executors and administrators agrees to purchase All that messuage &c. situate at &c. (c) with the appurtenances (d) ( for other description of parcels, see Vol. I. D. p. 41 and ante 4.) and the inheritance thereof in fee simple (e) for the sum of pounds. (f)

(2) And that he the said (vendor) will within (one month To deliver abmonths) from the date hereof (or on or before the ) at his own costs and charges make and deliver to the said (purchaser) or his solicitor a full and complete abstract of the title of the said (vendor) to the said {messuage &c.} and will also deduce a clear title thereto.

(3) And it is hereby agreed that the expenses of making out Expenses of abstracts and

of conveyance

(a) If vendors contract as trustees, say, " as such trustees as aforesaid do agree &c." and continue the ex- dors. pression throughout the deed.

Trustees ven-

(b) If there are two or more purchasers, say, " (purchasers) their heirs and assigns as joint tenants or as tenants in common."

Purchasers.

(c) If it be the purchase of a reversion, say, " subject to the estate of AB of &c. for the term of his life."

Reversion.

(d) If any reservation or exception is to be made, it may Exception. here be noticed, see Vol. I. p. 45.

Copyholds.

(e) If the premises are copyhold, say, "and the inheritance thereof according to the manor of

(f) If part of the purchase money is already paid by way of Deposits. deposit, say,

" part of which is this day paid to the said (vendor) by way of deposit as he the said (vendor) doth hereby admit."

And if there be timber on the estate which is to be sold Timber.

"and such further sum not exceeding the sum of pounds for the said timber as shall be determined in the manner hereafter mentioned."

IV.

FOR THE SALE
AND PURCHASE
OF PROPERTY.

to be equally borne by vendor and purchaser. the title to the said premises and of furnishing abstracts thereto as well as the expenses attending the conveyance of the said premises to the said (purchaser) shall be paid and defrayed by and at the equal costs of the said (vendor) and the said (purchaser.)

And that necessary parties shall execute conveyance.

(4) And also that the said (vendor) or his heirs and all other necessary parties shall and will on or before the dav next on receiving from the said (purchaser) his heirs executors administrators or assigns the said sum of in the manner hereafter mentioned and at the costs and charges of him the said (purchaser) his heirs executors administrators or assigns by good and sufficient conveyances and assurances convey and assure the said {messuage} and premises and the inheritance thereof in fee-simple (a) free from incumbrances with their appurtenances unto the said (purchaser) his heirs or assigns or to such person or persons as he or they should appoint free from incumbrances with the usual and proper covenants according to the circumstances of the title that the (vendor) is seized in fee that he has good right to convey for the quiet (b) enjoyment of the (purchaser) free from incumbrances (c) and for further assurance by the said (vendor.)

Purchaser agrees to pay consideration money. (5) And the said (purchaser) doth hereby for himself his heirs executors and administrators agree with the said (vendor) his executors and administrators that he the said (purchaser) his executors administrators or assigns shall and will on or before the date of and on the execution of such conveyance as aforesaid pay the sum of pounds [the residue of the said sum of pounds] unto the said (vendor) his executors or administrators or to such person or persons as he or they shall appoint.

Reversion.

(a) If a reversion is conveyed, say, "subject to the estate of the said AB."

Practical di-

(b) A reference to the particular acts for which the vendor is to covenant—as to which see Vol. I. 86, 87—is here sometimes introduced, but until the title is examined, this reference can rarely be correct, and therefore should not be made.

Incumbrances.

(c) A reference to any incumbrances may here be made, for which see Vol. I. 91. n.

And it is hereby further agreed by and between the said (vendor) and (purchaser) that the conveyance of the said {messuage} and premises and the assignments of such terms as have been already assigned to attend the inheritance and also all copies of wills and acts of parliament shall be prepared by and at the expense of the said (purchaser) and that such conveyance shall be settled and approved of on the parts of the said (vendor) and (purchaser) by their respective counsel or solicitors.

IV. FOR THE SALE AND PURCHASE OF PROPERTY.

Conveyance. &c. to be at purchaser's expense, and the conveyance shall be approved by the counsel or solicitor of each party.

- And that each of them the said (vendor) and (purchaser) shall pay the fees of his own counsel and the charges of his own solicitor.
  - And each to pay his own fees.
- (8) And it is hereby agreed between the parties hereto That the exthat any fine recovery [covenant for the production of title-deeds] penses of any fines or rerelease assignment or surrender of any incumbrances and of out- coveries, asstanding terms not already assigned to attend the inheritance terms not beand which shall be requisite or necessary to perfect the title to shallbe borne the said {messuage} and premises shall be respectively levied by vendor. suffered and prepared by and at the costs and charges of the said (vendor.)

signment of fore assigned.

And in case an act of parliament should be found to be Expenses of necessary for perfecting the title to the said premises the said ment to be (vendor) his heirs or assigns shall use his and their utmost ex- paid by venertions to procure the same and shall pay and defray the whole expenses thereof.

(10) And it is hereby agreed by and between the said Agreement reparties that all arrears of rent and other profits arising from the rears of rent. said {manor} and premises or any part thereof which now are or which on or before the said now next shall accrue or become due shall belong and be received by the said (vendor) And that all arrears of rent and other profits arising from the said {manor} and premises or any part thereof after the said day of shall belong to the said (purchaser.)

(11) And that the said [purchaser] his heirs or assigns shall on & c.

Purchaser to bave possession IV.
FOR THE SALE
AND PURCHASE
OF PROPERTY.

be put into possession of the said {messuage &c.} and premises with the appurtenances upon the day of next and shall be entitled to receive the rents issues and profits thereof from that day without prejudice however to any objection to the title of the said (vendor) which may then be depending on the part of the said (purchaser) and that the said (purchaser) shall from that time pay interest after the rate &c. on the said purchasemoney until the said purchase shall be completed.

Vendor to pay rates, &c. to a given day. (12) And that all rents rates taxes and out-goings payable for or in respect of the said {messuage} and premises shall be paid and discharged to the day of by the said (vendor) and his executors or administrators.

Buildings to be insured by vendor until completion of contract. (13) And it is hereby agreed (a) that until the said purchase shall be completed the said (vendor) shall effect an insurance on the said {messuage} and premises in the sum of pounds and keep the same so insured.

Accidents before completion of purchase not to affect the agreement, (14) And it is hereby further agreed that any diminution or increase in value in the said {messuage} and premises which may happen or occur before the completion of the said purchase shall not in any manner annul or affect this agreement.

v.

V.

Agreement by vendor to surrender copyholds.

(1) And that the said (vendor) his heirs or assigns and all other necessary parties shall on or before the day of next on receiving the said sum of pounds duly surrender the said {messuage} and premises according to the

Houses.

<sup>(</sup>a) Where the property contracted for consists of houses, &c. as if they were destroyed before the completion of the contract, the loss would fall upon the purchaser, this clause should always be inserted.

custom of the said manor to the use of the said (purchaser) his heirs and assigns or as he or they shall direct to be holden at the will of the lord of the said manor according to the custom of the said manor by the rents suits and services therefore due and of right accustomed And that at the time of such surrender the said (vendor) his heirs or assigns shall enter into the usual covenants for the title of the said {messuage} and premises for the quiet enjoyment of the said (purchaser) and for the further assurance of the said {messuage} and premises.

FOR THE SALE AND PURCHASE OF PROPERTY.

And covenant for the title.

(2) And at the time of such surrender being made and such That on surdeed of covenants being executed as aforesaid the said (purchaser) render purchaser will pay doth hereby for himself his heirs executors and administrators purchase covenant and agree with the said (vendor) his executors and administrators that he the said (purchaser) his executors administrators or assigns shall and will pay unto the said (vendor) his executors or administrators or to such person or persons as he shall appoint the sum of pounds.

render pur-

(3) And it is agreed that the said (purchaser) shall pay the That the purexpenses of the said surrender and all fees and fines due upon such surrender and upon the admission of the said (purchaser) of surrender, to the said {messuage} and premises as well as the expenses attending the said deed of covenant.

pay expenses

(4) And that the said (vendor) shall pay the expenses attend- and vendor of ing any customary fine or recovery which shall be necessary for very. completing the said purchase.

VI.

VI.

(1) First the said (vendor) doth hereby for himself his heirs ex- Agreement to ecutors and administrators agree to sell to the said (purchaser) sell life estate.

VI.
POR THE SALE
AND PURCHASE
OF PROPERTY.

the life (a) estate of him the said (vendor) in All that &c. (parcels) for the sum of pounds.

That vendor shall convey an estate for life. (2) And that he the said (vendor) and all other necessary parties shall and will on or before the day of next on receiving from the said (purchaser) his heirs executors administrators or assigns the said sum of pounds at the costs and charges of him the said (purchaser) his heirs executors administrators or assigns by good and sufficient conveyances and assurances convey and assure the said {messuage} and premises for the life (b) of the said (vendor) free from incumbrances such conveyances to contain the usual covenants.

That death of vendor or nominees shall not avoid contract. (3) And it is agreed that the death of the said (vendor) before the day of (or of the said AB or AB CD or EF or any or all of them) before the execution of the said conveyance shall not in any way affect this agreement.

VII.

VII.

Agreement to sell leasebolds. (1) First the said (vendor) in consideration of the sum of pounds (or in consideration of the rents to be paid and the covenants to be performed by the said (purchaser) as hereinafter is mentioned) agrees to sell to the said (purchaser) ALL THAT &c. (parcels) See Vol. I. p. 41 and ante 4) for the remainder of a

Estate for life of other or others. (a) If the estate be for the life of another or others, say, "the estate of him the said (vendor) for the life of AB or for the lives of AB CD and EF."

It is not usual, but it may perhaps be prudent to insert a stipulation for the insurance of the lives until the conveyance is completed, as otherwise, if the lives were to drop before the completion of the purchase, the loss would fall on the purchaser.

Life or lives of others.

(b) Or if it is an estate for the life of another or others, "for the life of the said AB" or "ABCD and EF."

years (a) from the day of which term was granted by an indenture bearing date &c. and made between (lessor) of AND PURCHASE the one part and the said (vendor) of the other part subject to the OF PROPERTY. rent covenants and agreements therein reserved and contained on the lessee's part to be paid observed and performed.

(2) And that the said (vendor) shall and will on or before the liver abstract. at his own cost and charges make and deliver to the said (purchaser) an abstract of  $\lceil (b) \rceil$  the title of the said (lessor) and also of the said indenture of lease and all other deeds and evidences relating thereto.

. (3) And shall and will on or before the day of pounds together with all other ne- ser shall asreceipt of the said sum of cessary parties at the costs and charges of the said (purchaser) his executors and administrators by a good and sufficient assignment and assurance assign and assure the said {messuage} and premises with the appurtenances unto the said (purchaser) his executors and administrators or as he shall direct for the residue of the said term free from incumbrances and shall therein enter into all usual covenants for the title.

on the That purcha-

(4) And also (c) shall and will procure the license and con- And will prosent of the said (lessor) at his own costs and charges.

cure lessor's consent.

(5) And it is hereby agreed that the said (purchaser) shall in Purchaser the said assignment to him covenant thenceforth to pay the rent and perform and to perform and observe the covenants reserved and contained in the said indenture of lease and to indemnify the said

(a) Or if it be a lease for years determinable on lives, say, Lives. "term of years if [ABEF or CD] and the survivors of them shall so long live."

(b) If the vendor has only a lease, omit the words in brackets Title. and for other clauses as to the production of leasehold tithes, see post, agreements for leases, and the note there.

(c) The vendor must procure the consent of the lessor where Lessor's it is necessary, although there is no express stipulation for that assent. purpose. Lloyd v. Crispe, 5 Taunt. 249.

VII. PAD THE SALE AND PURCHASE OF PROPERTY.

(vendor) therefrom And that the expenses of such a shall be paid and defraved by the said (purchaser.)

Purchaser to execute defeazance reviving condition.

(6) And also shall and will if required by the sai execute a defeazance reviving the condition contain said lease against assigning the said {messuage} and without the consent in writing of the said (lessor) ar envenant with the said (lessor) to pay the rent and personal the covenants reserved and contained in the said lease for the residue of the said term and pay and defray the costs and charges of such defeazance.

VIII.

#### VIII.

That vendor carries on business.

in consideration of purchase money vendor covenants to use every exertion to get his customers to employ purchaser,

(1) Whereas the said (vendor) hath for some time carried on the trade or business of a in street in the city of Testatum, that and hath established a considerable traffic therein PRESENTS WITNESS that the said (vendor) in consideration of pounds by the said (vendor) in hand well and the sum of truly paid at the execution of these presents (the receipt whereof is hereby acknowledged and hereby declared to be the full purchase-money and consideration for the goodwill of the said trade) He the said (vendor) shall and will from time to time and at all times hereafter recommend the said (purchaser) as a to all the friends and customers of him the said (vendor)

and do his utmost and make every exertion to procure them to deal with and employ the said (purchaser.)

and will not set up the same trade.

(2) And that he the said (vendor) shall not at any time within the space of years hence next ensuing either alone or with any other person or persons whomsoever or directly or indirectly carry on the trade or business of a or any similar trade or business in the city of or within (a) miles thereof

Carrying on trade.

<sup>(</sup>a) An agreement not to carry on a trade within twenty miles of a certain place is not illegal. 2 Chit. 407.

or serve or traffic in such trade or in any similar trade with any of his late or present customers who shall be resident in the said city of or within miles thereof.

VIII. FOR THE SALE AND PURCHASE OF PROPERTY.

#### IX.

IX.

And the said (purchaser) in consideration of the premises Covenant by Doth hereby for himself his heirs executors and administrators purchaser to covenant promise and agree with and to the said (vendor) his executors administrators and assigns that he the said (purchaser) his heirs executors or administrators or some of them shall and will well and truly pay or cause to be paid unto the said (vendor) his executors administrators or assigns the sum of pounds of lawful money of Great Britain and Ireland in manner following (that is to say) the sum of pounds part thereof on the day of the sum of pounds part thereof on the and the sum of day of pounds with interest at the the residue thereof on the day of rate of five pounds for the hundred by the year on the said several instalments from the day of when possession of the said hereditaments and premises is to be delivered to the said (purchaser) until the same are respectively paid.

pay purchasemoney by instalments and interest for

X.

(1) And it is hereby agreed and declared between and by the Timber to be said parties hereto that all the [(a) timber and timber-like trees trators, and wood standing and growing upon the said {manor farms lands hereditaments and premises shall on or before the be measured valued and appraised by two indifferent persons one of them to be appointed by and on the behalf of the said (vendor) and the other to be appointed by and on behalf of

x.

<sup>(</sup>a) Or it may be, "furniture and fixtures."

X.
POR THE SALE
AND PURCHASE
OF PROPERTY.

the said (purchaser) such appointment to be respectively notified by the said (vender) and (purchaser) to each other on or before the day of And in case such two persons so to be nominated and appointed as aforesaid shall not agree in their estimate or valuation of such timber and timber-like trees then the same shall be measured valued and appraised by such one indifferent person as the first two nominees shall for that purpose appoint umpire in the premises And the estimate or valuation of such two persons or of their umpire to be respectively nominated and appointed as aforesaid shall be conclusive and binding (a) upon the said parties hereto so that such estimate or valuation be delivered by them or him respectively to the said (vendor) and (purchaser) on or before the

and if they disagree by umpire.

Purchaser not to pay more than a stipulated sum. (2) Provided always and it is hereby agreed and declared that in case the value of the timber and timber-like trees shall according to such appraisement thereof exceed the sum of pounds then the said (purchasers) shall have the benefit of such excess and the said sum of pounds shall be considered as the full price of the whole of such timber and timber-like trees. But now it is agreed that in case the value of the said timber and timber-like trees should according to such appraisement be less than the sum of pounds then only so much money shall be paid by the said (purchasers) their heirs executors or administrators for the price or consideration for such timber and timber-like trees as the same shall be so actually valued and appraised at.

Provision on the failure of appointing arbitrators. (3) And if by reason of the said parties neglecting to appoint referees or a referee in manner aforesaid or by reason of such referees or referee respectively not appointing an umpire and not making such valuation or from any other cause the said valuation either of the two referees or umpire shall not be so made and delivered as aforesaid then and in either of such cases the said timber and trees shall be paid for on the day of and the value thereof be estimated at the sum of pounds And that the

Purchaser to pay value of timber

<sup>(</sup>a) As to this see post.

said (purchaser) shall and will pay any sum or sums not exceedpounds as shall be found to be the value of the AND PURCHASE ing the sum of {timber and timber-like trees} according to such appraisement OF PROPERTY. as aforesaid And shall and will pay and sustain the whole of and expenses of the costs and expenses attending such appraisement.

appraisement.

#### XI.

XI.

And it is further agreed that the said (purchaser) shall take That purchaser shall take fixat a valuation (a) to be made by A B of &c. and C D of tures and fur-&c. and if they should disagree in their valuation then by a valuation. third person to be chosen by the said A B and C D all the furniture and fixtures in the said house [and the wine-bins in the cellars thereof] the amount of which valuation is to be paid by the said (purchaser) to the said (vendor) within the space of

days next after the same shall be made and the said (purchaser) shall have notice thereof And it is agreed that the said valuation shall be made within (ten) days from the date hereof if the said A B and C D or their umpire can make the same

### XII.

XII.

And that if the said (vendor) should not deliver an abstract of If abstract his title to the said (purchaser) or his solicitor before the expira- delivered and tion of (one calendar month) from the date hereof or should not within a given deduce a good and marketable title to the said {messuage &c.} time, agreement to be and premises before the said day of then and in either of void. the said cases immediately after the expiration of the said (one

should not be

within that time.

<sup>(</sup>a) An agreement to sell at a valuation will not be enforced in equity, if the price fixed appears to be considerably below the real value. Parker v. Whitby, 1 Turn. and Russ. 366.

XII.
FOR THE SALE
AND PURCHASE
OF PROPERTY.

Declaration that time shall be the essence of the agreement.

day of calendar month) or the said as the case may be this present agreement shall (at the option of the said (purchaser) his heirs or assigns) be utterly void to all intents and purposes whatsoever and the jurisdiction of equity be wholly barred it being the intent and meaning of the parties hereto that in either of the events aforesaid the execution of this agreement shall not be enforced (against the said (purchaser) in any court of equity) notwithstanding any rule (if any such rule there be) that time cannot be made (a) the essence of a contract or any other rule or maxim whatsoever [in which case the said (vendor) his executors or administrators shall and will repay unto the said (purchaser) his executors or administrators the said sum of pounds so paid by way of deposit, \( \bar{b} \)

XIII.

#### XIII.

If purchase money be not paid, purchaser to pay interest. And it is hereby agreed that if the completion of the said purchase shall be delayed beyond the day of and the purchase-money shall not be then paid then the said (purchaser) his heirs executors or administrators shall pay interest from the day of for the said purchase-money or so much thereof

day of for the said purchase-money or so much thereof as shall then remain unpaid after the rate of pounds for every one hundred pounds by the year unto the said (vendor) his executors or administrators up to and until the said purchase shall be completed.

Time may be made the essence of the contract.

<sup>(</sup>a) Although it was at one time doubted whether time could be made the essence of the contract, it is now settled that it may. Hudson v. Bartram, 3 Madd. 440. And it need not be expressly stated in the agreement, if the nature of the property sold, demands that it should be made so. Withy v. Cottle, Turn. 78.

<sup>(</sup>b) If no deposit has been paid, this clause in brackets will of course be omitted.

XIV. POR THE GALE AND PURCHASE OF PROPERTY.

XIV.

#### XIV.

And it is hereby agreed that the said (purchaser) his heirs executors administrators and assigns shall and will well and truly pay shall and secure unto the said (vendor) his heirs executors and administrators the sum of pounds of lawful money of Great Britain and Ireland as and for the purchase-money of the said {messuage} and premises in manner following (that is to say) that he the said (purchaser) his heirs executors administrators or assigns will well and truly pay unto the said (vendor) his heirs executors admi- pay part of nistrators or assigns the sum of pounds part thereof upon the execution of such conveyance and assurance as aforesaid that he the said (purchaser) his heirs executors administrators or assigns will secure the further sum of pounds the remainder of the said purchase money with interest thereon from the execution of such conveyance by a mortgage of the said {messuage} and premises unto the said (vendor) either in fee or for a term of years as his counsel shall advise. (a)

Agreement

money on the day of and secure the rest by a mortgage.

#### XV.

(1) And it is hereby agreed between the said parties that Vendor to such of the title deeds or writings concerning the said premises as shall be found to relate to other property of the said (vendor) of equal or greater value shall be retained by him on his entering nant to prointo the usual covenant to be prepared by him at his own expence for producing the originals [such covenant nevertheless to be void if the said (vendor) should afterwards sell any part of and see post 23 the premises retained by him and deliver the same deeds and writings to the purchaser thereof and procure such purchaser to

deeds, and at his own expense coveduce them and deliver purchaser attested copies thereof.

XV.

<sup>(</sup>a) See a purchase deed of this description, Vol. I. 117, 133. and post p. 31. XXIV a.

XV. FOR THE SALE AND PURCHASE OF PROPERTY. enter into the same or the like covenants] and on his delivering at his own expense true and attested copies of all the said deeds and writings duly stamped.

Purchaser to have title deeds, and covenant to produce them, and give vendor copies thereof. (2) And it is hereby agreed between the said parties that such of the title deeds or writings concerning the said premises as shall be found to relate to other property of the said (vendor) shall be delivered to the said (purchaser) and the said (vendor) shall be entitled to have at his own expense as well the usual covenant by the said (purchaser) for producing the originals as true and attested copies of all the said deeds and writings duly stamped.

XVI.

XVI.

Purchaser to be at the expense of discharging incumbrances. And it is hereby agreed between the said parties that if the said {messuage} and premises shall be subject to any incumbrances they shall be paid off or otherwise satisfied by the said (purchaser) at his own expense and charges and the premises be effectually released and discharged therefrom previously to the conveyance to the said (purchaser) and such release and discharge shall at the like expense and charges of the said (purchaser) be made if necessary by separate deed or deeds to be executed by the said (vendor) but to be prepared and approved by the counsel or solicitor of the said (purchaser.)

XVII.

#### XVII.

Purchaser to pay a share of the expenses of an inclosure act, act, act, and it is hereby agreed and declared between and by the said parties to these presents that so much of the expenses attendant, act, and it is hereby agreed and declared between and by the said parties to these presents that so much of the expenses attendant, and it is hereby agreed and declared between and by the said parties to these presents that so much of the expenses attendant, and it is hereby agreed and declared between and by the said parties to these presents that so much of the expenses attendant, and it is hereby agreed and declared between and by the said parties to these presents that so much of the expenses attendant.

made and passed in the year of his present Majesty's reign entituled "An Act &c." and the surveying planning and allotting the said tract of commonable land and preparing making and inrolling the award of the commissioners in and by the said act appointed in pursuance thereof and all other charges and expenses attending the execution of the said act which shall become pavable for or on account of any allotment of the said tract of land for or in respect of the said premises hereby agreed to be sold by the said (vendor) as aforesaid shall be borne and paid by the said (purchaser) his heirs and assigns.

XVII. POD TUP CALE AND PURCHASE OF PROPERTY.

### XVIII.

XVIII.

(1) And that (a) the said (vendor) shall not be called upon or Vendor not to be required to produce any other evidence or documents respecting remote title to the title to a certain piece of land adjoining to the said messuage of land. and used as a yard thereto and which formerly belonged to the waste lands of the said parish of than certain indentures of lease and release bearing date &c.

(2) And it is hereby agreed that the said (vendor) shall not be That no evicalled upon or required to produce any other evidence or documents respecting the title to the said {messuage} and premises rior to a will. anterior to a certain will of A B late of &c. and bearing date the day of

(a) Wherever a sale of property is agreed upon, the title of Clauses prowhich has not recently been investigated, the vendor should always before such sale, lay an abstract of title before counsel; or for precludand should any difficulty occur in the title, a clause or clauses to ing enquiries. obviate it in the nature of the forms above may be inserted either in the agreement for purchase, or, if the premises are sold by auction, in the conditions for sale.

Even where the title is not defective, clauses, making recitals in deeds thirty years old evidence of the facts recited, and limiting the period of enquiry to a certain deed or will as to the whole of the property, may be advisable.

XVIII.
FOR THE SALE
AND PURCHASE
OF PROPERTY.

No evidence to be required of certain facts where there are recitals thereof in deeds thirty years back.

(3) And it is hereby agreed that no evidence shall be called for or required by the said (purchaser) of the birth marriage death intestacy or heirship of any person or persons appearing in the title to the said {messuage} and premises where such birth marriage death intestacy or heirship shall have been recited or stated or acted upon in or by any of the title deeds of the said {messuage} and premises or any part thereof made and executed thirty years before the date of these presents.

The expenses of administration to be borne by purchaser. (5) And it is hereby agreed that the said (purchaser) his heirs or assigns shall be at the expense of any administration or administrations (or limited administration or administrations) that may be required to be taken out for the purpose of constituting a personal representative or representatives of the trustee or trustees in whom any term or terms (or a term of years created by an indenture bearing date &c.) shall have been vested.

That the expenses of assigning a particular term shall be borne by purchaser. (6) And it is hereby agreed that if the said (purchaser) his executors or administrators shall be desirous of having an assignment of a certain term created by an indenture bearing date the day of all the expenses attending the enquiry as to who are the personal representatives of the trustee thereof and of obtaining letters of administration to his effects if such trustee is dead and the deed of assignment and all other expenses relating thereto shall be borne by the said (purchaser) his executors or administrators.

Expenses of evidence of title to be borne by purchaser.

(7) And it is hereby agreed that all attested official and other copies or abstracts of deeds wills or other documents or assurances not in the possession of the said (vendor) and all certificates or copies of parochial or other registers or evidence as to pedigrees which may be required by the said (purchaser) for examination or for verifying the said abstract or any fact matter or thing therein set forth or recited or for any other purpose shall respectively be made and obtained at his own expense.

- (8) And it is hereby agreed that such of the title deeds which concern this estate as relate to other estates of greater equal or inferior value shall be retained by the said (vendor) who shall enter into the usual covenant (to be prepared by him and at his expense) for their production to the said (purchaser) but all attested copies which may be required of such deeds shall be made tained by at the expense of the said (purchaser.)
- (9) And it is hereby agreed that the piece of land called having been received in exchange in the year the (purchaser) shall not require the production of the title to the lands given in exchange for the same piece of land.

XVIII FOR THE SALE AND PURCHASE OF PROPERTY. That all deeds relating to other property shall be revendor who shall covenant for their production, and see ante p. 19, (1). Title of lands given in exchange not to be required.

(10) And whereas the said piece or parcel of land and premises Title to lands allotted to AB of &c. by virtue of a cerwere in the year year of his der inclosure tain act of parliament made and passed in the late Majesty's reign and entituled "An Act &c." in exchange required. for a certain other piece or parcel of land belonging to him it is hereby agreed that the said (purchaser) shall not require any title to the said piece of land so allotted to the said A B prior to the said inclosure act.

exchange un-

(11) And it is hereby agreed that no title to the said {messuage} and premises shall be required by the said (purchaser) anteyear of the reign closure act. rior to a certain act made and passed in the of his late Majesty and entituled "An Act &c." and that the award thereby made shall be taken to have been duly and regularly made and the said (vendor) shall not be bound to produce any further or other title to the rights of common or lands in lieu of which such allotment was made.

No title to be rior to in-

(12) And it is hereby agreed that the said (vendor) shall not Vendor not to be required to identify the modern with the ancient descriptions of the parcels further than shall appear by the said abstract of scription furtitle.

identify new with old deappears by abstract.

(13) And it is hereby agreed that the said (vendor) shall not be required to get in the legal estate in a part of the said here- get in legal

Vendor not to be required to estate.

xvm. POR THE SALE OF PROPERTY:

ditaments and premises called &c. supposed to be outstanding AND PURCHASE in (trustee) or his heir at law.

Description of property to be taken as correct, and no abatement to be made.

(14) And it is hereby agreed that the description and admeasurement of the said {messuage} and premises shall be taken to be correct and if any error shall appear no abatement shall be required by the said (purchaser) nor any advance of price be made by the said (vendor.)

or abatement to be made.

(15) (Or it may be) if any error appear such mistake shall not vacate the present contract but a compensation shall be given or taken as the case may be and in case the said parties should disagree thereupon the same shall be referred to arbitration.

XIX.

## XIX.

Any disputes as to the sale to be referred to arbitrators.

And it is further agreed that if any dispute should arise between the said parties hereto touching any clause matter or thing relating to the sale of the said {messuage} and premises the same shall be referred to and finally settled by two indifferent persons one of whom shall be chosen by each of the said parties and if such two persons shall not agree then by an umpire to be chosen by them.

XX.

#### XX.

That title is defective.

(a) Whereas upon investigating the title to the said {messuage} hereditaments and premises it appears for the reasons hereinafter mentioned that the same is at present defective And it hath been

(a) When the title to a part only of the premises is defective, Part of the title defective. the same provisions as to part of the purchase money may be

agreed that the said (purchaser) shall nevertheless enter into the possession of the same hereditaments and premises and be entitled to the rents and profits thereof but that no conveyance thereof shall be immediately taken And whereas it appears that certain indentures of lease and release bearing date &c. and made &c. are not amongst the title deeds in the possession of the said (vendor) but that the same are mislaid but it is believed that the same may be recovered And whereas it hath been agreed that the sum of pounds part of the said purchase money should be transferred into the names of (trustees) upon the trusts hereinafter mentioned (transfer of stock accordingly as in Vol. I. p. 30) Now it is hereby agreed and declared that the said (trustees) and the survivor of them and the executors administrators and assigns of such survivor shall stand possessed of and interested in the said sum of pounds upon the trusts following (that is to say) in case the said indentures of lease and release which are now mislaid should be produced and delivered security of to the said (purchaser) his heirs or assigns on or before the and the said (purchaser) should have been suffered day of to hold and enjoy the same hereditaments and premises and to receive the rents issues and profits thereof in the mean time for his and their use and benefit Upontrust to transfer the said sum pounds three per cent. consolidated bank annuities and the accumulations thereof unto the said (vendor) his heirs executors administrators or assigns But if the said indentures of lease and release should not then be produced and delivered to the said (purchaser) his heirs or assigns then to transfer the said sum of pounds three per cent. consolidated bank annuities and the accumulations thereof to the said (purchaser) his heirs or assigns as an indemnity against any loss to be sustained or any claim or demand to be made on account of the said indentures of lease and release And the said (vendor) hereby covenants and agrees that he shall and will forthwith use his utmost exertions to find and procure the said indentures of lease and release and shall and will on

XX. POD TUP GALD AND PURCHASE OF PROPERTY.

that purchaser should enter into possession thereof, but that no convevance should be taken. that certain deeds are missing. Transfer of part of purchase money into names of trustees. Declaration that they shall stand possessed thereof upon certain trusts for the purchaser.

Covenant by vendor to use every exertion to procure the

adopted, and as it is conceived that very little difficulty will be found in making the alteration, a separate form is not introduced.

XX. AND PURCHASE OF PROPERTY.

their or either of them being found immediately deliver them to FOR THE SALE the said (purchaser) his heirs or assigns for his and their own use and benefit (power to change trustees and provisions for their indemnity and reimbursement as in Vol. I. 77-81.)

XXI.

#### XXI.

That only a [twenty-eight] years' title can be made to a certain close,

and that purchaser should be indemnified.

trusts of part of purchasemoney.

To keep the purchaser indemnified against all claims on account of such defect for 20 vears.

And if purchaser shall sustain da-

Whereas on the investigation of the title to the said {messuage} and premises it hath been discovered that the first mention which is made of a certain {cottage and close of land thereto adjoining situate in &c. and part of the said premises hereby contracted to be sold occurs in certain indentures of lease and release bearing date the [1st] and [2d] of [June 1801] and that no anterior title can be made thereto And whereas it hath been agreed that the said (purchaser) should be indemnified from any expense or loss which he may sustain or be put unto on account of such defect in the manner hereinafter mentioned (agreement to transfer part of purchase-money and transfer accordingly Declaration of as ante 25) Now these presents witness that it is hereby agreed and declared between and by the parties hereto that the said (trustees) and the survivor of them his executors administrators and assigns shall stand possessed of and be interested in the said sum of pounds three per cent. consolidated bank annuities upon the trusts following (that is to say) upon trust (to vary securities Vol. I. 68. (13) and stand possessed thereof p. 65. Upon trust to save harmless and keep indemnified the said (purchaser) his heirs executors administrators and assigns from and against all evictions entries losses damages costs charges expenses claims and demands and all proceedings at law or in equity to be made done set up or instituted by any person or persons whomsoever at any time or times during the term of twenty years to be computed from the day of the date of these presents for and on account of the said {cottage and close of land thereto adjoining} And if the said (purchaser) his heirs executors administrators or assigns or any of them shall pay sustain or be put unto any sum or sums of money loss damage or eviction as aforesaid Then and from time to time so often as the AND PURCHASE same shall happen and at the request of the said (purchaser) his heirs executors administrators or assigns with and out of the mage to rep dividends and interest of the said sum of pounds three per him, cent. consolidated bank annuities or by sale of a competent part thereof to pay and satisfy such sum or sums of money loss damage or eviction as aforesaid And subject to the trusts afore- and subject to said to permit the said (vendor) his executors administrators and pay interest to assigns to receive the dividends and interest of the said sum of

pounds three per cent consolidated bank annuities But if after Andifno claim the expiration of the said term of twenty years no claim or de- made to transmand shall have been made by any person or persons unto or re- fer the same to specting the said {cottage and close} or no loss or damage shall be sustained by the (purchaser) by reason thereof then upon trust (to transfer the same to vendor as ante 25.) But if any But if loss such damage loss or eviction should be borne or sustained by tained to inthe said (purchaser) his heirs executors administrators or as-demnify him fully. signs and the said (purchaser) should not have been fully indemnified and saved harmless therefrom to transfer the said sum of

pounds or so much thereof as would fully indemnify the said (purchaser) his heirs executors administrators or assigns therefrom to the said (purchaser) his heirs executors administrators or assigns and the residue thereof (if any) to the said (vendor) his executors administrators or assigns Provided always that Proviso that if if any claim or demand action suit or other proceeding to be proceduted bemade commenced or instituted during the said term of twenty indemnity to years shall extend be pursued or prosecuted beyond the expira- continue. tion of the said term then the indemnity hereinbefore provided shall continue to subsist and be available for protecting and indemnifying the said (purchaser) his heirs executors administrators and assigns (Power to appoint new trustees and provisions for their indemnity and reimbursement as in Vol. I. 77-81.)

FOR THE SALE OF PROPERTY.

vendor.

claim shall be

XXII.
POR THE SALE
AND PURCHASE
OF PROPERTY

#### XXII.

Covenant by vendor that if purchaser is desirous of disposing of property, and if defect shall not have been remedied.

(Recite the purchase deed see Vol. I. B. and then the defect in the title according to the circumstances see ante 24.) Now THESE PRESENTS WITNESS that the said (vendor) for himself his heirs executors and administrators doth hereby covenant and agree with the said (purchaser) his heirs appointees and assigns that if the said (purchaser) his heirs or assigns should at any time after the expiration of (three) years and within the space or term of (nine) years to be computed from the date hereof be minded or desirous to sell the said {messuage} and premises comprised in the said indenture of release bearing even date herewith and if the said defect shall not then have been remedied and if the said (purchaser) shall give unto the said (vendor) his heirs executors or administrators or leave at his or their usual place of residence (six) calendar months' notice in writing of his or their desire then and in such case and at the expiration of the (six) calendar months for which such notice shall be given he the said (vendor) his executors or administrators shall and will purchase the said {messuage} and premises of and from the said (purchaser) his heirs or assigns at or for the price or sum of pounds And the said (purchaser) hereby for himself his heirs executors and administrators covenants and agrees that on payment of the said sum of pounds pursuant to the aforesaid agreement he the said (purchaser) his heirs appointees or assigns and all other persons claiming through or under him shall and will at the request costs and charges of the (vendor) his heirs executors or administrators convey and assure the said {messuage} and premises with the appurtenances unto and to the use of the said (vendor) and his heirs or as he or they shall direct or appoint free from all incumbrances made done or committed by the said (purchaser) his heirs appointees or assigns Provided always that these presents shall not nor shall the said hereinbefore recited indentures of lease and release be considered construed or taken to be a mortgage or in the nature of a mortgage or security for money nor shall the same give or be

Vendor will purchase the same at the sum of £

Covenant by purchaser to convey the premises.

Proviso that these presents shall not be construed to be a mortgage. construed to give unto the said (vendor) his heirs executors administrators or assigns any right title or equity to redeem the said premises upon payment of the said purchase-money or sum pounds with interest Provided also that in case the said defect shall be remedied previously to any such notice as aforesaid or at the expiration of the said (six) calendar months for which such notice shall be given or left as aforesaid then and in such cases these presents and every thing herein contained shall be void.

XXII. FOR THE SALE AND PURCHASE OF PROPERTY.

That if defect shall be remediedagreement shall be void-

#### XXIII.

· XXIII.

(1) And for the due performance of the said agreement each Each of the [and every] of the said parties hereto bindeth himself to the binds binds binself in sum Tothers and other his executors administrators and assigns of pounds of lawful money of Great Britain and in the sum of Ireland to be recovered against the defaulter by way of liquidated (a) damages for the nonperformance of the said agreement and not by way of penalty.

(2) And it is hereby agreed that in case of the nonperform- On breach of ance of the covenant (or covenants) hereinbefore contained he one party a the said (covenantor) shall and will well and truly pay unto the sum to be paid by way of lisaid (covenantee) his executors administrators or assigns the further quidated da-

<sup>(</sup>a) It is a well known rule that a court of equity will relieve "Penalty" and against the payment of a penalty on a compensation being made liquidated dafor the actual damage sustained, but where a sum was to be paid by way of stipulated damages, it was at one time thought that all relief was excluded, and that the parties must be bound by their own agreement. Smith v. Dickenson, 3 Bos. and Pull. 630, Astley v. Weldon, 2 Bos. and Pull 353; but the more modern rule of construction seems to be that the words "penalty" and "stipulated damages" shall not be regarded, but that the effect of the whole instrument shall be attended to, and that the real damage sustained shall be alone recovered. See Randal v. Everest, 1 Mood. and Malk. N. P. C. 41, Reilly v. Jones, 1 Bing 302. 8 J. B. Moo. 244. S. C. and 3 Byth. Conv. by Stewart 441.

XXIII.

FOR THE SALB

AND PURCHASE

OF PROPERTY.

sum of pounds of lawful money of Great Britain and Ireland by way of liquidated damages for the nonperformance of the said covenant (or covenants) and not by way of penalty.

XXIV.

#### XXIV.

AGREEMENTS FOR MORT-GAGES AND

GAGES AND ANNUITIES.

The loan of a

The loan of a sum of money. Deposit of title deeds. Agreement to execute mortgage.

AGREEMENTS FOR MORTGAGES AND ANNUITIES.

(1.) Whereas the said (mortgagee) hath this day lent unto the said (mortgagor) the sum of pounds AND WHEREAS the said (mortgagor) hath deposited in the hands of the said (mortgagee) the several deeds and evidences of title mentioned in the schedule hereunto annexed Now these presents witness that in consideration of the sum of pounds so lent to him as aforesaid he the said (mortgagor) doth hereby covenant and agree with and to the said (mortgagee) his {heirs} and assigns that the said (mortgagor) and his {heirs} and all other necessary parties shall on or before the day of at the costs and charges of the said (mortgagor) his executors or administrators well and effectually convey and assure by such conveyances and assurances as the said (mortgagee) his {heirs} or assigns shall approve All &c. (parcels see Vol. I. Div. E. and ante 4) free from incumbrances unto [and to the use] of the said (mortgagee) his {heirs} and assigns(a) But subject nevertheless to redemption on the repayment of the said sum of pounds with interest for the same after the rate of pounds for the one hundred pounds at the times and in the manner therein to be mentioned.

Conveyance to contain all usual covenants.

(2.) And it is hereby agreed that the said conveyance shall contain the usual covenants for title and for further assurance and all other provisoes declarations and covenants usually inserted in mortgages of the like nature.

Leasehold.

(a) If leasehold, say, " for the residue of the term of years."

(3.) And that in the said conveyance shall be inserted a power or proviso authorising the said (mortgagee) his {heirs} or assigns in case of default being made in the payment of the said sum of ANNUTTIES. pounds or interest six months after notice for the pay- Power of sale

XXIV. FOR MORT-GAGES AND

ment thereof absolutely to sell and dispose of the said heredita- in conveyance. ments and premises of his and their own authority.

(4.) And also that in the said conveyance shall be inserted As also clauses the usual provisions for effecting an insurance upon the said for insurance and repairing. {messsuage} and premises in the sum of pounds and for repairing the same.

# XXIV. a.

XXIV. a.

(Recite indenture of lease as in Vol. I. p. 17. (34) whereas the said (purchaser) hath contracted and agreed purchase, with the said (vendor) for the purchase of the said {messuage or tenement and piece or parcel of garden ground} and that part of the premises comprised in the said indenture of lease with their purchase appurtenances for the residue and remainder of the said be paid immeyears at or for the price or sum of And at the time of entering into the said contract it was agreed that the said (purchaser) should pay to the said (vendor) pounds part of and that the now last the sum of the said purchase money which he the said (purchaser) hath should be pounds the residue of manner hereaccordingly done and that the sum of the said purchase money should be secured to be paid with such interest for the same at such times and in such manner as hereinafter is mentioned Now this indenture witnesseth that Testatum in consideration of the said sum of pounds by the said (vendor) consideration paid to the said (purchaser) as hereinbefore is mentioned (the receipt whereof the said (vendor) doth hereby acknowledge and sum to be of and from the same and every part thereof doth hereby acquit release and for ever discharge the said (purchaser) his heirs executors administrators and assigns and every of them) and also in

And Contract for

money-should diately, which purchaser hath accordingly

residue thereof

whereby in of sum already paid and of paid,

XXIV. 2. POR MORT-GAGE AND ANNUITIES.

Vendor agrees to stand possessed of premises subject to proviso.

Provision that if purchaser shall pay residue of purchase money by three half yearly instalments and interest, vendor will make over the premises to purchaser.

consideration of the sum of pounds the residue of the said purchase money secured to be paid by the said (purchaser) to the said (vendor) on such days and times with such interest thereon as is hereinafter mentioned It is hereby agreed and declared between and by the parties to these presents that she the said (vendor) her executors administrators and assigns shall henceforth stand and be possessed of and interested in All that the said {messuage or tenement piece or parcel of garden ground and all and singular other the premises comprised in the said indenture of lease and which were thereby demised to the said (vendor) her executors administrators and assigns for the vears as aforesaid with their and every of their term of appurtenances subject to the proviso or condition and covenant or agreement for the assignment of the same to the said (purchaser) his executors administrators and assigns hereinafter mentioned (that is to say) Provided ulways and it is hereby agreed And the said (vendor) doth hereby for herself her heirs executors and administrators covenant promise and agree with and to the said (purchaser) his executors administrators and assigns That if the said (purchaser) his executors administrators or assigns Do and shall well and truly pay or cause to be paid unto the said (vendor) her executors or assigns the sum of pounds of lawful money of Great Britain and Ireland by three equal successive half yearly instalments with interest for the same or so much thereof as shall from time to time remain due and payable after the rate of five pounds for one hundred by the year to commence and be computed from the now last past (that is to say) the sum of (being the sum of pounds with half a year's interest for the said sum of pounds at the rate aforesaid) on the pounds (being a further sum of now next ensuing the sum of pounds together with a half year's interest for the sum of pounds then remaining due at the rate aforesaid) on the then next following And the further sum of (being the sum of pounds the residue of the said sum of pounds together with half a years interest for the said sum of

pounds at the rate aforesaid) on the

without any deduc-

next ensuing which will be in the year

tion or abatement whatsoever out of the said sums or any of them or any part thereof respectively for or on account of any taxes charges assessments or other matter cause or thing whatsoever now or hereafter to be taxed charged assessed or imposed upon the same Then and in such case and immediately after the payment of the said sum of pounds and the interest thereof shall be made as aforesaid she the said (vendor) her executors administrators or assigns shall and will upon the request and at the cost and charges of the said (purchaser) his executors administrators or assigns assign and make over or cause or procure to be assigned or made over unto the said (purchaser) his executors administrators or assigns or to such person or persons as he or they should direct or appoint the said {messuage or tenement and piece or parcel of garden-ground} and premises comprised in the said hereinbefore recited indenture of lease and also the same indenture of lease subject to the observance and performance of the covenants and agreements in the said indenture of lease contained and which on the part of the lessee or assignee of the said premises ought to be observed and performed but free from all incumbrances whatsoever in the mean time by her the said (vendor) her executors administrators or assigns or by any other person or persons lawfully or equitably claiming or to claim by from or under or in trust for her them or any of them made done or committed he the said (purchaser) his executors administrators or assigns entering into the usual and proper covenants to indemnify the said (vendor) her heirs executors and administrators against the covenants and agreements in the said indenture of lease contained And the said (vendor) doth hereby for herself her heirs Covenant by executors and administrators covenant promise and with and to the said (purchaser) his executors administrators and assigns in manner following (that is to say) That for and That the lease notwithstanding any act deed matter or thing whatsoever by her the said (vendor) made done omitted committed executed or knowingly or willingly permitted or suffered to the contrary the said hereinbefore recited indenture of lease is at the time of the sealing and delivery of these presents a good and available demise or lease in the law of the said {messuage or tenement and piece or

XXIV a. GAGE AND ANNUITIES.

parcel of garden-ground} and all and singular other the premises

XXIV a. FOR MORT-GAGES AND ANNUITIES.

Good right to

For quiet en-

јоушена.

Free from incumbrances. therein comprised with their appurtenances and now is in full force unforfeited and unsurrendered and not in any way become void or voidable And that for and notwithstanding any such act deed matter or thing as aforesaid she the said (vendor) now hath in herself good right full power and absolute authority to bargain sell and assign the said {messuage &c.} comprised in the said indenture of lease with their appurtenances unto the said (purchaser) his executors administrators or assigns for and during the residue and remainder of the said term of years according to the covenant for that purpose hereinbefore contained and the true intent and meaning of these presents And also that he the said (purchaser) his executors and administrators shall and may immediately from and after the payment of the said sum of pounds and the interest thereof according to the force and effect of the proviso hereinbefore contained for the payment thereof respectively and at all times thereafter during the continuance of the said term of years peaceably and quietly enter into and have hold occupy possess and enjoy the said {messuage or tenement and piece or parcel of garden-ground} and all and singular other the premises with their appurtenances and receive and take the rents issues and profits thereof to and for his and their own use and benefit without any lawful let suit trouble denial eviction disturbance or interruption of from or by the said (vendor) her executors or administrators or any other person or persons whomsoever claiming or to claim by from through under or in trust for her them or any of them or by with or through her or their or any of their act or acts means consent privity or procurement And that free and clear and freely and clearly and absolutely acquitted exonerated discharged or otherwise by the said (vendor) her heirs executors or administrators well and sufficiently saved defended kept harmless and indemnified of from and against all and all manner of former and other gifts grants bargains sales leases assignments mortgages surrenders forfeitures and re-entrys and arrears of rent and of from and against all other estates troubles charges and incumbrances whatsoever either already or to be hereafter had made done committed or executed or knowingly or willingly permitted or suffered by the said

(vendor) her executors administrators or assigns or any person or persons whomsoever lawfully or equitably claiming or to claim GAGES AND by from through under or in trust for her or them or by with or ANNUFFTES. through their or any of their acts means default privity or procurement save and except the covenants and agreements in the said hereinbefore recited indenture of lease contained which on the part of the lessee or assignee ought from the

YYIV .

now last to be observed and performed And further that the said (vendor) her executors administrators or assigns and all and every other persons and person And for furwhomsoever lawfully or equitably claiming or to claim any therassurance. estate right title or interest in or out of the said {messuage or tenement and pieces or parcels of garden-ground and premises hereby covenanted to be assigned or any part thereof by from through under or in trust for her or them shall and will immediately from and after the payment of the said sum of pounds and the interest thereof according to the form and effect of the proviso hereinbefore contained for payment thereof and at all times thereafter during the continuance of the said term of

years upon the reasonable request and at the costs and charges of the said (purchaser) his executors administrators or assigns make do and execute or cause or procure to be made done and executed all and every such further and other lawful and reasonable acts deeds things conveyances and assurances in the law whatsoever for the further better more perfectly and absolutely assigning and assuring of the said {messuage or tenement and piece or parcel of garden-ground} and premises hereby covenanted to be assigned with their and every of their appurtenances unto the said (purchaser) his executors administrators and assigns for and during all the residue and remainder of the said term of years which shall then be to come and unexpired as by the said (purchaser) his executors administrators or assigns or his or their or any of their counsel in the law shall be reasonably advised devised and required Provided always and it is hereby further agreed and declared Provision that between and by the parties hereto and the true intent and ful for purchameaning of these presents nevertheless further is That it shall and ser to enter and may be lawful to and for the said (purchaser) his executors ad- mises until de-

enjoy the prefault shall be made.

ministrators and assigns peaceably and quietly to enter into and

upon and to have hold occupy possess and enjoy the said

XXIV a. FOR MORT-GAGES AND ANNUITIES.

{messuage &c.} comprised in the said indenture of lease and hereby covenanted to be assigned with their appurtenances and to receive and take the rents issues and profits thereof for his and their own use and benefit until default shall be made in the payment of the said sum of pounds or the interest thereof or any part thereof respectively contrary to the said proviso or agreement for payment of the same and the true intent and meaning of these presents without any let suit trouble interruption or disturbance whatsoever of from or by the said (vendor) her executors administrators or assigns or of from or by any other person or persons whomsoever lawfully or equitably claiming or to claim by from under or in trust for them or any of them And the said (purchaser) doth hereby for himself his heirs executors and administrators covenant promise and agree with and to the said (vendor) her executors administrators and assigns that he the said (purchaser) his executors administrators or assigns shall and will well and truly pay or cause to be paid unto the said (vendor) her executors administrators or assigns the said pounds and the interest thereof in the parts shares and proportions and on or at the days or times mentioned in the aforesaid proviso or agreement for payment thereof respectively without any deduction or abatement whatsoever according to the true intent and meaning of these presents And also that if default shall be made in payment of the said sum of or the interest thereof or any part thereof respectively contrary to the aforesaid proviso or agreement for payment of the same and the true intent and meaning of these presents Then and in such case it shall and may be lawful to and for the said (vendor) her executors administrators and assigns at any time or times thereafter into and upon the {messuage or tenement or piece or parcel of garden-ground} and premises comprised in the said indenture of lease and hereby covenanted to be assigned to enter and the same from time to time peace-

ably and quietly to hold occupy possess and enjoy and receive and take the rents issues and profits thereof to and for his and their own use and benefit without any let suit trouble interruption or disturbance whatsoever of from or by the said (pur-

Covenant by purchaser to pay the residue of the purchase money.

And that if default shall be made in payment of residue, it shall be lawful for vendor to enter & to hold the premises. chaser) his executors administrators or assigns or any other person or persons whomsoever having or lawfully or equitably claiming GAGES AND or who shall or may have or lawfully or equitably claim any estate right title interest of in to or out of the said {messuage or tenement and piece or parcel of garden-ground} and premises comprised in the said indenture of lease and hereby covenanted to be assigned or any of them or any part or parts thereof (Then insert covenants for the vendor holding free from incumbrances and for further assurance by purchaser as in Vol. I. 183, 184. preserving the same expression as in the clauses before given; covenant by purchaser to perform covenants and to indemnify vendor therefrom as in Vol. I. 185. provision for insurance by purchaser as in Vol. I. 164.)

XXV. FOR MORT-ANNUITIES.

# XXV.

XXV.

(1) First the said (grantor) doth hereby agree for himself his Agreement to heirs executors and administrators with the said (grantee) his executors and administrators that he will within days from the date hereof in consideration of the sum of pounds grant unto the said (grantee) his executors administrators and assigns an pounds for the life of the said (grantor) or (grantee) (or of (nominees) of &c. and the survivors and survivor of them) to be payable quarterly from the time of granting the same with a proportional part thereof up to the day of his death and to be charged upon the issuing out of All &c. [parcels] [and to be further secured by the bond and warrant of attorney to confess judgment of the said (grantor)] in such manner and form and with such proper parties and such usual covenants and powers either of sale or otherwise for securing the payment thereof as the counsel of the said (grantee) shall advise.

grant annuity.

(2) And shall and will (deliver abstract (a) as ante 7 (2).)

Deliver Abstract.

<sup>(</sup>a) For provisions as to leasehold title see post and note there, and the same forms may be employed in an agreement for an annuity.

XXV. FOR MORT-GAGES AND ANNUFITES.

Agreement by grantee to pay consideration money.

- (3) And the said (grantee) doth hereby for himself his heirs executors and administrators covenant and agree with the said (granter) his executors and administrators to pay the sum of pounds of lawful money of Great Britain and Ireland unto the said (granter) at the time of executing the said securities.
- If grantor should die, agreement to be void.
- (4) And it is hereby further agreed that in case the said (grantor) shall die before the day of next if the said securities or one of them should not have been previously executed then these presents so far as regards the granting of the said annuity shall be void.

That grantor shall covenant to insure his life.

(5) And it is hereby agreed that the said (grantor) shall covenant that he the said (grantor) will from time to time at the request of the said (grantee) his executors or administrators attend at any insurance office in London or Westminster or produce such vouchers as such office may require in order that the said (grantee) may effect an insurance on his life in any sum or sums of money not exceeding the sum of pounds And that he the said (grantor) will not leave the kingdom or go upon the seas without giving to the said (grantee) his executors administrators or assigns one calendar month's previous notice of his intention so to do And also a covenant by the said (grantor) for payment of any additional sum for insurance in consequence of his doing any of the said acts.

And a covenant to insure premises. (6) And also a covenant by the said (grantor) at his own expense to insure the said {messuages &c.} and premises or such part thereof as is liable to be destroyed by fire.

And a proviso for repurchase.

(7) And in the said conveyance shall be contained a proviso or agreement enabling the said (grantor) to repurchase the said annuity on giving six calendar months' notice of his intention and on the payment of all arrears and expenses incurred by reason of the non-payment of the said annuity or any part thereof.

Costs of agreement to be paid by grantor. (8) And it is hereby agreed that the said (grantor) shall pay the costs and charges of these presents and of a duplicate thereof.

(9) And it is hereby agreed that the same several securities and a memorial thereof if the same shall be deemed necessary shall be prepared by the said (grantee) at the costs and charges of the said (grantor) and that all the other costs and charges in borne by grananywise attending the granting and securing the said annuity shall be paid and borne by the said (grantor.)

YYV FOR MORT-GAGES AND ANNUITIES.

Expenses to be

(10) And that the said (grantor) shall at the execution of Deliver titlethe said securities deliver unto the said (grantee) all the titledeeds evidences and writings relating to the said hereditaments and premises in the possession or power of the said (grantor.)

# XXV a.

XXV a.

First the said (grantor) doth hereby for himself his heirs Covenant to executors administrators and assigns covenant and agree with and to the said (grantee) his heirs executors administrators and assigns that in consideration  $\lceil of(a) \rceil$  the said marriage and also in consideration of the natural love and affection which he the said (grantor) hath for his daughter the said Mary said (grantor) shall and will for and during the term of his natural life well and truly pay or cause to be paid to the said (grantee) one annuity or yearly sum of pounds of lawful money of Great Britain and Ireland to commence from the said last and to be paid by equal half-yearly payments the first payment thereof to commence and be paid on the next.

<sup>(</sup>a) This form is sometimes employed in family transactions. Practical di-The annuitant ought always, however, even in these cases, to rection. have the power of enforcing the payment of the annuity by its being secured on some kind of property.

XXVI. POR LEARES.

# XXVI.

# AGREEMENTS FOR LEASES. (a)

That lessor contracted to

(1) Whereas by certain articles of agreement bearing date on build a house or about the day of the said A B contracted with (original

Agreement for leases of two sorts.

(a) Agreements for leases are of two sorts; they are either intended to serve for an actual lease, or are merely drawn up at the time, until a formal lease can be completed. 1. Agreements intended to be used instead of a formal demise, are in fact leases; "where there is an instrument by which it appears that one party is to give and another to take possession, that is a lease." Morgan v. Bissell, 3 Taunt. 65. They must therefore be stamped with a lease-stamp. See Clayton v. Burtenshaw, 5 B. C. 41. 7 Dow. & Ry. 800. S. C. 2. If an agreement clearly expresses an intention to rely on a future lease in all respects. and not to take it merely by way of further assurance, an agreement-stamp should be affixed. Poole v. Bentley, 12 East 168. 2 Camp. 286. S. C. Doe d. Walker v. Groves, 15 East, 244. But possession should never be taken on such an agreement, as the tenant may be evicted at any time by an action at law, as he has no legal interest. Hamerton v. Stead, 3 B. & C. Nor can the owner distrain for rent, his only remedy being an action for use and occupation. Hegan v. Johnson, 2 Taunt. 148, Dunk v. Hunter, 5 B. & A. 322. But if rent is paid under the agreement, then a tenancy from year to year is created, and the landlord may then distrain. Mann v. Lovejoy, 1 Ry. & Moo. N. P. C. 355.

Doubt as to the propriety of the adoption of agreements for leases.

In this state of the law, although agreements for leases are very common, and all the usual forms have therefore been introduced, yet the propriety of their adoption is certainly doubtful. they are used instead of formal leases, the form of a lease had better be at once employed, as all doubt will be thus obviated, and no mistake respecting the stamping, &c. can occur. If they are merely drawn up until a formal lease can be made, they may be useful for the purpose of compelling a party to perform his contract, but can serve no other purpose, and in the present state of the law, great difficulty arises as to the proper stamp to be affixed to them. If it be possible, therefore, a lease should always be drawn up at first. These observations, of course, do not apply to agreements for building or for finishing leases.

lessor) to build and finish a messuage or dwelling-house upon a certain piece or parcel of land situate at &c. And whereas the said (lessor) is desirous of relinquishing his said contract And the for lessee to fisaid (lessee) is desirous of undertaking it And the said (original lessor) has at the request of the said AB agreed to covenant in the manner hereinafter mentioned.

POR LEASES. and agreement

## XXVII.

XXVII.

First the said (lessor) [(a) for himself his heirs executors Agreement to and administrators] agrees to let and the said (lessee) [for himself his heirs executors and administrators] agrees to take.

First the said (lessor) doth hereby for himself his heirs Agreement to executors and administrators covenant promise and agree with the said (lessee) his executors and administrators in consideration of the rents and covenants hereinafter agreed to be paid and performed that he the said (lessor) (b) his {heirs} (c) and assigns shall and will within the space of months (or on or before the

grant a lease.

day of now next ensuing) when thereunto requested by the said (lessee) his executors or (d) administrators well and effectually by indenture demise and lease unto the said (lessee) his executors and administrators.

(3) First the said (lessor) doth hereby for himself his heirs Covenant that

when lessee shall have built a house

(a) If these words are inserted at the commencement as ante, Practical dithey should not be repeated.

rection.

(b) If the lease is to be by husband and wife, say. "he the said (lessor) and his wife."

Lessor & wife.

(c) If a lessor has only a term for years in the premises, say, Term for years "his executors, administrators, or assigns."

(d) The word "assigns" would be improper, as although the Assigns of lesinterest of a lessee in a lease even before entry, may be assigned, see. Co. Litt. 46, b. yet his interest under the above agreement, is clearly not assignable. See Skerne's case, Moor. 27.

XXVII.

Vendor will demise. executors and administrators covenant promise and agree with the said (lessee) his executors and administrators that in consideration (a) of the rents and covenants hereinafter agreed to be paid and performed he the said (lessor) his {heirs} (b) or assigns shall and will when and so soon as the said (lessee) his executors or administrators shall have erected finished and covered in the {dwelling-house and premises} [or dwelling-houses erections and buildings] hereinafter mentioned well and effectually by indenture [or indentures] demise and lease to the said (lessee) his executors and administrators All &c. (parcels, see Vol. I. E. & ante p. 4).

Covenant that when certain works shall be finished, lessor will grant a lesse. (4) First the said (lessor) doth hereby for himself his heirs executors and administrators covenant promise and agree with the said (lessee) his executors and administrators that in consideration of the rents and covenants hereinafter agreed to be paid and performed he the said (lessor) his {heirs} (b) or assigns shall and will when and so soon as the said (lessee) his executors or administrators shall have completed and finished the several works and matters hereinafter particularly mentioned well and effectually by indenture [or indentures] demise and lease unto the said (lessee) his executors and administrators All &c. (parcels, see Vol. I. E. & ante p. 4.)

XXVIII.

## XXVIII.

For years, months, or weeks. (1) For the term of from the day of

years (or months or weeks) commencing now next.

Payable quarterly in advance.

(2) At the [yearly] (c) rent of

pounds payable quarterly by

Considerations

(a) For other forms of consideration, see Vol. I. Division C. p. 31.

Under-lease.

(b) If the lessor has only a lease of the premises, say, "executors, administrators."

Distress.

(c) A lessor may distrain for his rent in the whole or any part of the house, and whether it is let furnished or unfurnished without any express clause for that purpose. Spencer's case. 5 Co. 17 a. Newman v. Anderton, 2. N. R. 224. It is therefore unnecessary to insert it.

the said (lessee) to the said (lessor) on the usual quarter days by equal portions and the first payment thereof to be made on the now next [and each quarter's rent to be paid in advance (if so)]

XXVIII. FOR LEASES.

(3) At the rent of pounds for every calendar month or week Pavable payable at the end of every calendar month or week the first monthly or weekly. payment thereof to be made on the day of now next for pavable in advance at the commencement of every month or week the first payment to be made on [Monday] next.]

(4) To hold to the said (lessee) his executors administrators To hold the next ensuing for the term same for years at a cerand assigns from the day of pounds payable quarterly tain rent. vears (a) at the yearly rent of on Christmas-day Lady-day Midsummer-day and Michaelmasday free and clear from all taxes rates and assessments whatsoever which now are or which may hereafter be payable the first payment to be made on the day of

(5) To hold the same unto the said (lessee) his executors and To hold the now next for the term of the rent of administrators from the day of vears (b) at the yearly rent of payable quarterly clear of all taxes rates and assessments whatsoever the first payment thereof to be made on the day of now next.

(6) To hold such part of the arable ground as is now in wheat To hold a ` or wheat stubble from the day of now next the pasture ground from the day of now next and the residue of the now next for the term of said premises from the day of years from each of the said days respectively at the yearly

(b) Or "at the yearly rent of a pepper-corn for the first years of the term and for the residue of the term at the "&c. (as above.)

<sup>(</sup>a) In an agreement for a lease of tithes by a rector, it is Lease of tithes usual to insert the words "if the said (lessor) shall so long continue parson" but this is in fact implied by law, and is therefore unnecessary. Wheeler v. Hayden, Cro. Jac. 328. 14 Vin. Abr. 68. pl. 11. 7 Bac. Abr. 19 Gwill. ed. 2 Roll Abr. 718 pl. 10. 21 Vin. Abr. 462. S.C. Peppercorn

XXVIII. FOR LEASES. rent of pounds And at the additional rent of pounds for every acre of meadow or pasture land which the said (lessee) his executors administrators or assigns shall break up or convert into tillage, and in that proportion for any less quantity than an acre The said rents to be payable quarterly on the usual quarter days and the first quarterly payment of the said rent of pounds to be made on the day of now next and the first quarterly payment of the said additional rent to be made on the first of the said quarter days which shall happen next after such breaking up or converting into tillage and to be continued from those times respectively free from all taxes rates and assessments whatsoever (the land tax only excepted.)

XXIX.

# XXIX.

Agreement that lessee may hold until notice to quit. (1) And it is hereby agreed between the parties hereto that after the said day of the said (lessee) shall and may continue to hold and enjoy the said {messuage or dwelling house} [fixtures furniture and effects] and premises (or the said first floor attic and premises) hereinbefore mentioned at the same rent until one of the parties hereto shall give unto the other calendar months (or weeks) notice in writing to quit the same.

Lessee to leave premises in good condition.

(2) And it is hereby agreed that the said (lessee) shall leave the said {messuage or dwelling house} and [the said fixtures furniture effects] and premises (or the said first floor attic and premises) in as good state and condition as the same are now in reasonable wear and tear excepted.

Replace crockery, &c. (3) And shall and will replace such part of the glass china and crockery as shall be broken by him with similar articles of the same value and pattern.

Lessor to pay taxes &c. (4) And it is hereby agreed that the said (lessor) shall during the said term pay all rates taxes and assessments whatsoever which are now or shall hereafter be made upon the said {mes-

. . . .

suage or dwelling house} and premises and also the ground-rent due for the same And shall and will keep the said {messuage or dwelling house and premises in good repair and condition.

VVIV FOR LEASES.

and keep premises in repair.

(5) And replace such portion of the said furniture utensils and Replace furnithings mentioned in the said schedule as shall from time to time be destroyed or damaged by the reasonable use and wear thereof.

#### XXX.

XXX.

(1) And it is hereby agreed by the parties hereto that in the That in indensaid indenture of lease there shall be contained the following shall be concovenants on the part of the said (lessee) his heirs executors and tained coveadministrators (that is to say).

nants by the lessee.

(2) To pay the said yearly rent accordingly.

to pay rent

- (3) And all taxes rates and assessments (except the land tax.) and taxes.
- (4) And to keep the said {messuage or dwelling-house} [fur- To repair. niture] and premises intended to be leased in good plight and condition and in tenantable repair during the said term (or in as good plight and condition as the same are now in) and for delivering up the same at the end or other sooner determination of the said term in good and proper repair with all and every fixtures erections and improvements which shall be set up in or upon the said premises during the said term reasonable wear and tear thereof excepted.
- (5) And also for painting twice in oil colours all the outside To paint outwood and iron work of the said {messuage or dwelling house} and premises once in every third (or fourth) year of the said term.

side once in three years.

XXX. FOR LEASES.

For painting, &c. inside once in seven years. (6) And also for painting and papering the interior of the said {messuage or dwelling-house} and premises once in every seventh year of the said term.

Pay share of expenses of drain.

(7) And also that the said (lessee) shall and will during the said term bear and pay his and their full proportion and share of the costs and charges of cleansing and keeping in repair the common sewer or drain for carrying off the water and soil of the dwelling-houses in the said street And also bear a proportionable share of the expenses of repairing party walls.

And shall not suffer fixtures to be removed.

(8) And shall not during the said term remove or suffer to be removed any of the [furniture or] fixtures to be removed out of the said {messuage or dwelling-house.}

Not to assign without li-

(9) And not to assign lease or underlet the said {messuage or dwelling-house} and premises or any part thereof to any person (a) or persons whomsoever (except a legatee (b) or legatees executor or executors who shall take the same without giving any valuable consideration or without any collusion) unless with the consent in writing of the said (lessor) his {heirs} or assigns first had and obtained.

Assignment by lessee without license. (a) If it is the intention of the parties that the (lessee) should not be permitted to assign without license, a clause to that effect should always be inserted in the agreement for the lease; as it is still a vexata questio whether if it is expressed that the lease is to contain all usual and reasonable covenants, such a clause can be inserted under these words. See Henderson v. Hay, 3 Bro. C. C. 632; Morgan v. Slaughter, 1 Esp. N. P. C. 8; Boardman v. Mostyn, 6 Ves. 467, 471; Folkinham v. Croft, 3 Anst. 700; Brown v. Raban, 15 Ves. 528; Jones v. Jones, 12 Ves. 186; Vere v. Lowden, 12 Ves. 179; Church v. Brown, 15 Ves. 258; Bennett v. Womack, 7 B. & C. 627.

Bequest.

(b) As it is at least doubtful whether a condition to alien is not broken by a bequest, Berry v. Taunton, Cro. Eliz. 331; Dumper v. Sims, Ib. 815; Fox v. Swann, Sty. 483; these words should be inserted.

(10) And also a condition (a) giving a power of re-entry on the bankruptcy or insolvency of the said (lessee) his executors administrators or assigns or on his or their suffering the said giving a release to be taken in execution or doing any other act whereby or by means whereof the said {messuage or dwelling-house} and premises may become assigned or assignable to any other person or persons.

XXX. POR LEASES.

A condition entry on bankruptcy or insolvency of

(11) And also a covenant by the said (lessee) his executors Covenant to and administrators to permit the said (lessor) his heirs or assigns permit lessor to enter upon or his or their agents and surveyors at any time or times during premises and make schedule the last seven years of the said term to enter into and upon of fixtures. the said premises or any part thereof for the purpose of taking a schedule or schedules of the fixtures therein.

(12) And not to carry on or permit any person to carry Not to carry on any trade or business whatsoever or to convert the said any kinds {messuage or dwelling-house} and premises into a shop or warehouse or otherwise attempt to carry on any trade or business whatever.

(13) And not to carry on or permit any person to carry on the Not to carry trades or businesses of a tavern keeper coffee-house keeper on particular tallow and soap chandler or boiler victualler furniture broker &c. (see Vol. I. 334) or any other noisome noxious or stinking trade or business whatsoever in or upon the said {messuage or dwellinghouse} and premises or any part thereof.

(14) And also a proviso for the suspension or abatement of Proviso for the said rent during such time as the said {messuage or dwelling- suspension of rent in case of

fire.

(a) This clause should always be inserted, as in the absence Bankruptcy of of any express stipulation, a clause for re-entry on an assign- lessee. ment without license, is not broken by the bankruptcy of the lessee, as it is an assignment by operation of law. Goring v. Warner, 7 Vin. Ab. 85. pl. 9; Philpot v. Hvare, Ambl. 480; Roe v. Galliers, 2 T. R. 133.

XXX. POR LEASES. house} and premises shall be uninhabitable by reason of fire storm or tempest.

Proviso for

(15) And also a proviso or covenant for the insurance by the said (lessee) of the said {messuage or dwelling-house} (or the buildings on the said premises) in the sum of in the joint names of the said (lessor) and (lessee) in some or one of the public offices of insurance in London or Westminster and for the production of the receipts for the said premiums payable thereupon.

Lessor to enter and give notice to repair.

(16) And also a proviso for liberty for the said (lessor) to enter and view the said premises twice or oftener in every year and to give notice to repair the same and also a proviso for the said (lessee) to repair the same accordingly within three months after every such notice.

Proviso for re-entry on the premises on nonpayment of rent, &c. (17) And also a proviso for re-entry (a) on the said {messuage or dwelling-house} and premises on nonpayment of the said yearly rent by the space of twenty-one days next after the same shall become due or on nonperformance of any of the covenants to be contained in the said indenture of lease on the lessee's part to be performed.

Proviso for making void the lease on nonpayment of rent.

(18) And also a proviso for making void the said intended lease on nonpayment of the said rent twenty-one days after the same shall become due and be demanded and on breach or non-performance of any of the covenants to be contained in the said lease on the part of the said (lessee) his executors or administrators or on his bankruptcy or insolvency.

That the term shall be determinable at seven or fourteen years.

(19) And it is hereby agreed between the parties hereto that the said term shall be determinable by either party (or by the said (lessee) at the end of the first seven or fourteen years) on giving months' previous notice in writing.

Practical direction.

<sup>(</sup>a) This covenant is generally omitted in building leases, and is growing much out of use in others.

(20) And the said (lessee) doth hereby for himself his heirs executors and administrators covenant promise and agree with the said (lessor) (a) his {heirs} and assigns that he the said (lessee) his executors and administrators shall and will accept lease, the said indenture of lease upon such terms and conditions as aforesaid and execute a counterpart thereof.

XXX. FOR LEASES.

lessee to accept

(21) And shall and will pay all (or an equal half part) of the and pay costs costs and expenses of these presents and a counterpart thereof ment and of and of the said indenture of lease and a counterpart thereof and employ person employ such person as the said (lessor) his {heirs} and assigns that lessor shall think proper to prepare the same.

(22) And it is hereby agreed that if the {messuage or That if the dwelling-house} and premises or any part thereof should be de- destroyed bestroyed or damaged by fire storm or tempest before the execution fore the execution of agreeof the said indenture this agreement shall nevertheless continue ment, it shall in force and have the same operation as if the said premises had ing. not been so destroyed or damaged.

house shall be

(23) And it is hereby agreed that the said (lessor) shall not Lessor not to be required to shew (b) his title to grant the said lease.

be required to shew his title.

(24) And it is hereby agreed that the said (lessor) shall at his Lessor to proown expense on or before the day of now next deliver to the solicitor of the said (lessee) an abstract of the

<sup>(</sup>a) If the husband be seised in right of his wife, say, his wife their heirs and assigns."

<sup>(</sup>b) In the absence of any stipulation a vendor cannot enforce Title of lessor. a specific performance of an agreement for a lease, without producing his title, Fildes v. Hooker, 2 Meriv. 425; Purvis v. Rayer, 9 Pri. 488; but upon the sale of a lease, without any stipulation for making a good title, the purchaser cannot insist on the production of the lessor's title, George v. Pitchard, 1 Ry. Moo. N. P. C. 417. It had better therefore be expressed in the agreement that the lessor is, or is not to produce his title.

XXX.

title of the said (lessor) which enables him to grant the said lease and also produce and shew forth the deeds and other evidences therein mentioned at the office of the said solicitor of the said (lessee) and permit the same to be examined therewith.

That lessor shall only be obliged to produce lease to himself. (25) And it is hereby agreed that the said (lessor) shall not be required to produce any further evidence of the title to the said {messuage or dwelling-house} and premises than a lease for years bearing date the day of and made between (original lessor) of the one part and (lessor) of the other part.

And indemnify lessee from loss by reason of covenants in lease. (26) And shall covenant to indemnify the said (lessee) his executors administrators and assigns from all losses charges damages claims and evictions which he or they may sustain by reason of the nonpayment of the rent or the nonperformance of the covenants and agreements reserved or contained in the said indenture of lease his executors administrators or assigns.

That lessor shall covenant to produce deeds. (27) And that the said (lessor) shall covenant to produce the said deeds and evidences of title (or the said indenture of lease) and permit the said (lessee) his executors administrators and assigns at his or their own costs and charges to have and take attested copies thereof.

Covenant by lessor to endeavour to procure renewal. (28) And in the said lease shall be contained a covenant by the said (lessor) to use his best endeavours but at the costs and charges of the said (lessee) from time to time to renew the said lease when any of the lives of the said (nominees) or any renewed life shall fall in.

XXXI.

## XXXI.

Not expose goods outside premises. (1) And a covenant by the said (lessee) his executors or administrators not to expose any goods or other articles for sale outside the said {shop or dwelling-house} and premises.

(2) And to colour and paint all the stucco work of the said {shop} and premises of a Bath stone colour in order to preserve the uniformity of the said street and to assimilate in every respect the said {shop} and premises to the adjoining premises.

XXXI

Paint premises of a certain

(3) And not to alter remove or take away any of the doors and not to rewindows or partitions of the said {shop or dwelling-house} and &c. premises without the license of the said (lessor) in writing first had and obtained.

# XXXII.

XXXII.

(1) And also a covenant by the said (lessee) his executors and Repair chancel administrators to repair sustain and uphold the chancel of the nift vendor during the said term and also to said parish church of indemnify and save harmless the said (lessor) his executors and administrators from all claims or demands on account thereof.

therefrom.

(2) And also (a) a power enabling the said (lessor) his [heirs] Power of disand assigns if the said rent should be in arrear for the space of of lessee. twenty-one days after the same should be due and be demanded from time to time to enter upon any lands tenements hereditaments or premises of or to which the said (lessee) is seised or entitled and to levy and raise thereupon the sum or sums which shall be then in arrear and unpaid.

<sup>(</sup>a) This clause may be found useful in building leases, and in Practical direction. leases for tithes.

XXXIII. FOR LEASES.

## XXXIII.

Covenant by lessor that he will build a house or houses according to a specification.

(1) And the said (lessee) doth hereby for himself his heirs executors and administrators covenant and agree with and to the said (lessor) his {heirs} and assigns (a) that he the said (lessee) his executors or administrators (b) shall and will on or before the day of next at his or their costs and charges in a good substantial and workmanlike manner and with proper materials of every sort to be approved by the surveyor of the said (lessor) erect build and complete (c) [and render fit for habitation] one (or [ten]) good and substantial brick messuage or dwelling-house (messuages or dwelling-houses) to be roofed with slates and to be faced with stucco] and it is agreed that the same shall be erected under the direction and inspection and to the satisfaction of the surveyor of the said (lessor) and in all things conformable to the plan and specification hereunder written or hereunto annexed. (d)

Expend pounds therein

(2) And shall and will lay out and expend a sum amounting at the least to pounds in erecting and building the same.

Surety.

(a) If there is a surety, say,

"And the said [surety] doth hereby for himself his heirs executors and administrators covenant and agree with the said (lessor) his heirs and assigns."

Surety.

(b) If there is a surety, say,

" Or in default thereof that he the said [surety] his executors or administrators shall and will."

(c) Or, "And cover in."

Practical direction.

(d) The particular way in which the house or houses are to be built should be mentioned minutely in the specification. It is quite useless to incumber the agreement with them, and to a certain extent dangerous, as some mistake may easily remain undiscovered in the description of the technical details of the mode of building; and on the other hand a vague and general agreement will not be carried into execution, Mosely v. Virgin. 3 Ves. 184.

(3) And that no bricks tiles or other wares shall be made or burnt upon the said premises and no gravel or loam shall be dug therefrom.

XXXIII. FOR LEASES.

Bricks not to be made, or gravel dug. Employ lessor's surveyor.

(4) And shall and will employ an architect or surveyor to be named by the said (lessor) to superintend the building (or repairing thereof).

for superintending the building thereof.

- (5) And shall and will pay and discharge the said architect's Pay architect's or surveyor's fees of five pounds per cent. on the sum expended
- (6) And also that he the said (lessee) his executors adminis- Pay a proportrators or assigns shall and will bear and pay a just and proper proportion with the other tenants or lessees or occupiers of any other lands tenements or hereditaments of the said (lessor) his {heirs} or assigns or of any other occupiers of the premises adjoining to those hereby agreed to be demised of the costs and expenses incurred or to be incurred in the cutting or building any other ways channels public sewers and drains upon through or under the said premises hereby agreed to be demised or any part thereof such proportion to be fixed by the said architect of the said (lessor) his {heirs} or assigns.

penses for cutting drains.

(7) And it shall be lawful for the said [lessee] his executors Power for administrators or assigns at any time or times hereafter during lessee to erect the said term to erect and build a mews or stables and coachhouses at a proper distance from the said {messuages or dwellinghouses} (or attached to the gardens of the said {messuages or dwelling-houses} and premises.)

(8) And also the said (lessee) covenants and agrees with and Paper rooms to the said (lessor) that the said (lessee) his executors or administrators shall and will on or before the day of at his or their own costs and charges paper all the rooms in the first second and third floors of the said {messuage} and premises with fit and proper paper and bordering.

on three floors,

XXXIII. FOR LEASES.

and shall set up dresser, (9) And shall make and fix a dresser and shelves in the front kitchen and a new leaden cistern with leaden pipes leading therefrom to the back kitchen of the said premises.

and complete the premises. (10) And in every other respect complete and to render fit for immediate possession the said {messuage or dwelling-house} and premises.

When buildings are finished, lessee to have separate leases of every house. (11) And it is hereby agreed that when and so soon as the said architect shall have reported in writing to the said (lessor) his heirs or assigns that the said {messuages or dwelling-houses} are erected built and covered in to his satisfaction the said (lessee) his executors administrators or assigns shall be entitled to have separate leases of each {messuage or dwelling-house} with the garden and appurtenances thereto belonging for the term of

years or so much thereof as shall be then to come and unexpired and at such rents as shall be respectively ascertained by the said architect as in a just and proper proportion to the said gross rent of pounds on executing counterparts thereof respectively and paying all the costs and charges of every such lease and a counterpart thereof And it is hereby agreed that in every such lease so to be granted the said (lessee) his executors administrators and assigns shall covenant in the manner following (that is to say)

And that leases shall contain covenants

XXXIV.

#### XXXIV.

to complete a house.

And that the said (lessee) shall complete the said {messuage or dwelling-house} and premises thereby to be respectively demised and render the same thoroughly habitable in a substantial and workmanlike manner with all proper and necessary fixtures.

XXXV.

# XXXV.

- (1) And that the said (lessee) shall and will within the space To repair. of months (or years) from the date of these presents well and substantially repair and paint the said {messuage or dwelling-house} and the out-houses thereto belonging and use and employ the best materials of all kinds in making such repairs And make and complete such repairs to the satisfaction of the surveyor of the said (lessor).
- (2) And shall and will in the course of years expend the sum of pounds in making such repairs being on an average the sum of pounds for each year.

# XXXVI.

XXXVI.

(1) And in the said lease or leases there shall be contained by the lessor covenants on the part of the said (lessor) his heirs executors and administrators

- (2) For the quiet enjoyment of the said {messuage or dwelling-house} and premises by the said (lessee) his executors and administrators during the said term upon the payment of the said yearly rent and the performance and observance of the covenants to be contained in the said indenture of lease on his or their parts to be observed and performed in the manner hereinbefore mentioned.
- (3) And also a covenant on the part of the said (lessor) his to rebuild in heirs or assigns in case the said {messuage or tenement} should

XXXVI. POR LEASES. be destroyed or damaged by fire to rebuild or repair in a proper and workmanlike manner as soon as conveniently may be the whole or such part thereof as shall be so destroyed or damaged.

XXXVII.

# XXXVII.

Covenant by lessor to procure lord's assent to lease.

And the said (lessor) doth hereby for himself his heirs executors and administrators covenant and agree with and to the said (lessee) his executors and administrators that he will endeavour to procure the assent of the lord or lady of the manor of the said lease.

XXXVIII.

# XXXVIII.

Covenant by lessee to take beer,&c. of lessor.

(1) And shall and will take of the said (lessor) all the beer ale wine brandy and other liquors which shall be sold or consumed in and upon the said premises by the said (lessee) his executors or administrators and his and their customers.

Covenant by lessor to pro-&c.

(2) And that the said (lessor) his {heirs} and assigns shall vide good beer and will during the said term provide the said (lessee) his executors and administrators (a) with good and palatable beer ale brandy wine and other liquors at a fair and reasonable price.

Good beer.

<sup>(</sup>a) A lessee is not bound by this covenant, unless the beer is good. See Holcombe v. Hewson, 2 Camp. 391, Cooper v. Twibill, 3 Camp. 286 n.; and see Weaver v. Sessions, 6 Taunt. 154, these words, therefore, in strictness need not be inserted.

VIVV FOR LEASES.

#### XXXIX.

(1) And also keep the arable land of the said premises in a Course of husdue course of husbandry and not to set more than two acres with potatoes carrots cabbages rape-seed mustard-seed or [turnipseed.7

- (2) And to repair amend maintain and keep the said barns Maintain out-houses hedges ditches gates pales and fences of the said premises in good repair.
- (3) And yearly and every year to cleanse and scour sixty Cleanse hedgeroods of hedging in the most necessary parts of the said pre- ing. mises.
- (4) And not to cut grub up prejudice or destroy any of the Not to destroy trees thorns and quicksets growing in and upon the said lands trees. and premises except for the purpose of the repairs of the hedges.

(5) And not sow two white crops successively.

Not to sow two white crops.

(6) And to preserve the said trees thorns and quicksets to Preserve trees. the utmost of his power.

(7) And not to sell any hay straw or stubble but with his Consume hay cattle to eat and consume upon the premises the hay and straw that shall yearly grow thereon and to lay and spread all the ma- mises and nure which during the said term shall arise from the said farm upon the lands and grounds which shall be ploughed and had in tillage in a good and husbandlike manner.(a)

which shall grow on prespread manure.

<sup>(</sup>a) For other provisions usual in farming leases, see Vol. I. 341-348.

XXXIX. FOR LEASES.

Permit lessor &c. to enter, in the spring next before the expiration of term. (8) And to permit the said (lessor) his heirs and assigns and his and their servants and labourers at the usual times in the spring next before the expiration of the said term to enter upon the said farm and premises or any part thereof for the purpose of making the same fit for husbandry.

Preserve fruit-

(9) And also to preserve and reinstate any standard or wall-fruit trees which may decay or be cut down. (a)

Lessee to take a way-going crop off onethird of land. (10) And that the said [lessee] shall and may in the harvest next after the termination of the said term have and take a way-going crop of wheat or hard corn off one-third part of the land then in tillage as the same shall arise in due course of husbandry so that he thrash the same in the barn of the said farm and premises before the day of then next and leave the straw of such way-going crop and the manure to be produced in the winter and spring next before the expiration of the said term for the use of the said (lessor) his heirs or assigns and pay to the said (lessor) or the tenant next succeeding him upon demand

pounds an acre for such way-going crop and so in proportion for any less quantity than an acre.

XL.

# XL.

And all covenants contained in indenture of lease. (1) And all such other covenants as are contained on the lessee's part to be observed and performed in a certain indenture of lease bearing date &c. and made &c. and by which the said (lessor) holds the said messuage or dwelling-house and premises and also

and all other usual covenants. (2) And all other (b) usual and reasonable covenants.

Special covenants. Practical direction. (a) Here mention any special covenants.

(b) Every covenant intended to be inserted should be mentioned, and nothing left to these general words, as what is meant by "usual covenants" has been the subject of frequent litigation.
—See ante p. 46, n. (a.)

(3) All other the covenants clauses provisoes agreements and restrictions usually reserved and contained in leases of {farms} in the neighbourhood.

XL. FOR LEASES.

All usual covenants of the neighbourbood.

(4) And such other covenants clauses and agreements as are All clauses rerequired by the statute in that case made and provided (a) to tute. make leases valid against the issue in tail (or by husband seised in right of his wife.)

quired by Sta-

(5) And all such other covenants clauses provisoes and agree- All clauses ments as are usually reserved and contained in leases of houses in London and Westminster (or other city or town.)

contained in leases of houses in London,

(6) But so that no covenant or clause to be therein contained but so that no shall in any way cause a forfeiture of the said premises.

covenant shall cause a forfeit. ure.

# XLI.

. XI.I.

BUILDING AGREEMENTS.

## BUILDING AGREEMENTS.

(1) Whereas by indentures of lease and release bearing date Indentures of respectively on or about the day of and made or expressed lease whereby to be made between A B of &c. of the one part and [owner or owners of the ground of &c. of the other part a certain piece or parcel of land or ground situate in the parish of and bounded &c. hereditaments and premises county of (for other descriptions of parcels see Vol. I. E. and ante 4.) were (for the considerations in the said indenture of release mentioned) conveyed by the said AB to and to the use of the said  $\lceil owner(b) \rceil$ or owners] his (or their) heirs and assigns for ever.

lease and repremises are conveyed, &c.

Uses to bar

<sup>(</sup>a) 32 Hen. VIII. c. 28.

<sup>(</sup>b) If the premises are conveyed to one to uses to bar dower, see Vol. I. 13.

XLI. BUILDING AGREEMENTS.

Agreement to erect buildings immediately and that owners have appointed architect. That architect has prepared plans.

- (2) And whereas the said (owner or owners) have determined and resolved that a {messuage or dwelling house or chapel} shall be erected and built thereon and have appointed Y Y of &c. architect to be the architect for building the same.
- (3) And whereas the said architect hath prepared several plans or designs for the said {messuage &c.} and hath made a specification of the said intended buildings and works.

Agreement to build.

(4) And whereas the said (builders) have agreed with the said (owner or owners) to execute and complete the said intended buildings and works according to the plans or designs and specification hereinbefore mentioned upon the terms and subject to the stipulations hereinafter expressed and the said parties hereto have respectively agreed to enter into the covenants hereinafter contained on their part to be observed and performed.

XLII.

# XLII.

That builders. will erect the buildings.

(See Commencement I. 8.)

(1) That the said (builders) their executors or administrators shall and will (a) at their own costs and charges erect (b) and build upon the said piece or parcel of land and premises as aforesaid a {messuage or dwelling-house} and other buildings according to the plans or designs and specification which have been so prepared by the said Y Y as aforesaid (which plans or designs and specification are annexed to these presents) and shall and will in all respects execute and complete the said buildings and works in the most substantial and workmanlike manner and to

SMALL UNDER-TAKING.

"Shall or will within the space of months from the date of these presents."

(b) If the undertaking is small, say, "Erect build and completely cover in and finish."

<sup>(</sup>a) If the undertaking is small, and the provisions as to the time given afterwards are not inserted, insert,

the satisfaction and under the direction of the said (architect) (a) or other the architect for the time being of the said buildings and works be testified in writing under his hand.

RIIII.DING AGREMENTS.

(2) That if the architect for the time being of the said buildings and works shall think proper to make any additions or alteration. omissions to or from the said specification herein-before mentioned or any alterations in the said plans or designs which shall require any additional buildings or works to be erected or to cause any of the buildings or works so agreed to be done to be omitted it shall be lawful for the architect for the time being of the said buildings and works by any writing under his hand to be addressed to the said (builders) their executors or administrators to direct any such additions alterations or omissions to be made and the same shall be made accordingly.

lowed to make

(3) That no additions alterations or omissions shall be made That no alterain the said buildings and works without the written authority of the architect for the time being of the said buildings and works written authofor that purpose first had and obtained and no extra or addi-chitect. tional work shall be paid for as hereinafter is provided unless the same be done upon such order and direction of the architect for the time being as aforesaid.

rity of the ar-

(4) That in case such additions alterations or omissions as That the value aforesaid shall be made the value thereof shall be ascertained tions shall be by the architect for the time being of the said buildings and works in the usual and customary mode of admeasurement and shall be paid or allowed for as hereinafter is provided.

of the altera ascertained.

(5) That the whole of the said intended buildings and works Time of comshall be completely finished on or before such day or time as is hereinafter mentioned (that is to say) if no addition be made to

Mutual archi-

<sup>(</sup>a) If the architect is to be a mutual architect, say, "To the satisfaction of A B. of &c. or any other surveyor or tect. architect whom the said (builders) and (owner or owners) shall for that purpose by some writing under their hands appoint."

YIJI. BUILDING AGREEMENTS.

Agreement as to time of completing alterations.

the same as aforesaid on the day of but if any such addition shall be made to the same then on such day after the day of as the architect for the time being of the said buildings and works shall by any writing under his hand nominate and appoint for that purpose so that the said (builders) their executors and administrators be allowed for the performance and execution of any additional or extra work which shall be so directed as aforesaid as much time as shall be equal to the allowance of one week for the execution and performance of so much additional or extra work as shall be valued at the sum of pounds and so in proportion for any greater or less quantity of such work.

That if buildings are not completed by the time fixed, builders shall pay pounds a week until they are completed.

(6) That if the said buildings and works shall not be completely finished to the satisfaction of the architect for the time being on or before the day or time appointed or to be appointed for that purpose as hereinbefore is mentioned the said (builders) their executors or administrators shall and will pay or cause to be paid to the said (owner or owners) their executors or administrators the sum of pounds for every week the said buildings and works shall remain and continue incomplete and unfinished and so in proportion for any less time than a week the same to be recovered as liquidated damages in any of his Majesty's Courts of Record at Westminster or retained out of any money which shall remain due or be payable to the said (builders) their executors or administrators under or by , rtue of these presents.

Materials to be provided by (builders.)

(7) That the said (builders) their executors or administrators shall and will find and provide all stone timber lime bricks and other materials of all kinds whatsoever which shall be necessary to be used in or about the said buildings and works or any part or parts thereof of the best quality of their several kinds regard being had to the directions which may from time to time be given by the architect for the time being.

That no materials shall be removed withof architect.

(8) And that no materials which shall be brought or left upon the said premises for the purpose of carrying on the said buildout the consent ings and works shall be afterwards removed from the said premises without the consent in writing of the said architect for the time being for that purpose first had and obtained.

XI.II BILL DING AGREEMENTS.

(9) That the said (builders) their executors and administrators and all the workmen and labourers to be employed by them in or about the said buildings and works shall and will observe and follow all such orders and directions as shall be made or followed. given by such person as the architect for the time being shall by any writing under his hand appoint to be the superintendent or clerk in his absence relative to the manner of executing the different works and particularly to the bonding of stone or bricks mixing of the mortar (describe the particulars according to the circumstances.)

and the directions of such person as architect shall appoint to be

(10) That the superintendent or clerk of the works shall fur- Superintendnish for the use of the said (builders) their executors or administrators copies of the plans or designs and drawings by or according to which the said buildings and works are to be executed but copies shall not be considered as valid unless the same are signed by the architect for the time being and no deviation shall be made from the said copies except by the written authority or direction of the said architect.

ant to furnish plans to builders to be signed by architect.

(11) That the said (builders) their executors or administrators shall and will at all times during the progress of the said buildings and works keep on the said premises a competent foreman Ito each trade or business for the time being employed or exercised in or about the said buildings and works] and shall and will employ in or about the said buildings and works such work- man as archimen only as the architect for the time being shall consider com- prove. petent and shall approve.

Builders to employ foreman [in each trade.]

and such worktect shall ap-

(12) That it shall be lawful for the architect for the time Incompetent being at his own discretion by any writing under his hand from workmen to be dismissed. time to time to direct any foreman or workman retained or employed by the said (builders) their executors or administrators in or about the said buildings and works who shall in the opinion of the said architect be incompetent to act or behave insolently

XLII. BUILDING AGREEMENTS. or improperly to be removed from his employment and that the said (builders) shall and will cause such foreman or workman to be removed forthwith and will not permit him again to come in or upon the said premises without the consent in writing of the said architect.

No task-work to be permitted. (13) That no part of the said buildings and work shall be let out or executed as task-work.

Expenses to be borne by builders.

(14) That the said (builders) shall and will at their own expense provide all materials scaffolding cartage toils machines and implements of every description necessary for the due complete and proper execution of the said buildings and works and shall and will at the like expense provide all necessary boards for inclosing the said buildings and works and all necessary shores centrings and casings.

Power given to architect to reject materials,

and to require alterations to be made by builders.

(15) That in case the said (builders) their executors or administrators, shall not furnish and supply the materials for the said buildings and works of such suitableness fitness and quality as the architect for the time being shall think proper or shall not execute the buildings and works to the satisfaction of the said architect it shall be lawful for the said architect to reject such materials as shall appear to him to be unfit for the purposes intended and to require the said (builders) their executors or administrators at their own expense to alter vary and execute such part or parts of the said buildings and works as shall not be done and performed to the satisfaction of the said architect and thereupon the said (builders) their executors or administrators shall and will remove the materials which shall be so rejected as aforesaid within three days after notice for that purpose shall be given to him his executors or administrators and in lieu thereof furnish and supply other good and substantial materials to the satisfaction of the said architect and shall and will pull down and reinstate and re-execute to the satisfaction of the said architect such parts of the said buildings and works as he shall have required to be pulled down or re-executed.

(16) That if the said (builders) their executors or administrators shall neglect for the space of [three] days after being thereunto required in writing by the architect for the time being of the If builders said buildings and works to proceed in the execution of the same or to pull down and re-execute any part or parts thereof which alterations, the architect for the time being shall require to be pulled down and employ anore-executed it shall be lawful for the said architect to purchase proper and sufficient materials and to employ such other builders and workmen to execute and complete the said buildings and works or to pull down and re-execute such parts as the said architect shall require to be pulled down and re-executed as aforesaid as the said architect shall nominate and appoint for that purpose and upon such terms as to the said architect shall seem reasonable and proper whose decision therein shall be final.

TI.II. BUILDING AGREEMENTS.

shall not make the necessary ther buildes.

(17) That in case the said buildings and works shall be exe- That if alteracuted and completed or any part thereof pulled down and re-executed under the authority lastly hereinbefore contained the said builders, ex-(builders) their executors and administrators shall and will upon paid by builddemand pay to the said (owner or owners) their executors or administrators all sum and sums of money costs and expenses whatsoever which shall be incurred or sustained or become pavable by reason of the said buildings and works being so executed and completed or any part thereof so pulled down and re-executed as last aforesaid and in case the same shall not be paid when demanded the same shall and may be retained out of the said monies which shall for the time being be due or payable to the said (owner or owners) their executors or administrators under or by virtue of these presents And also that the said (builders) their executors or administrators shall not nor will in any manner prevent hinder or molest the said architect for the time being or any person or persons employed by him from completing and finishing the said buildings and works in manner aforesaid or in using the materials which shall be on the said premises which shall be provided by either party hereto.

(18) That the said (builders) their executors or administrators 'shall and will at their own expense make good all damage which VOL. II.

Builders to make good all damages except damages by fire.

XLII. BUILDING AGREEMENTS. shall or may happen to the said buildings and works or any part thereof during the progress thereof from whatever cause the same may happen (save and except damage by fire) And that if during the progress of the said buildings and works any materials tools or other things which shall be brought or left upon the premises shall be stolen therefrom or shall be lost or destroyed the loss occasioned thereby shall be wholly borne by the said (builders) their executors and administrators.

Sum to be paid to builders.

(19) That the said (owner or owners) their executors or administrators shall and will pay or cause to be paid unto the said (builders) their executors or administrators for the buildings and works to be executed and completed by them as aforesaid the sums of money hereinafter mentioned (that is to say) If the said buildings and works shall be executed and completed according to the plans or designs and specification hereinbefore mentioned without any additions or omissions being made thereto or therefrom as aforesaid the sum of pounds but if the said buildings and works shall be executed and completed as aforesaid with any such additions or omissions then such a sum as shall be equal in amount to the sum of pounds after the said additions or omissions to be so ascertained as hereinbefore is mentioned shall have been added thereto or be deducted therefrom as the case may be.

Pay price of building at one time. (20) That the said (owners) their executors or administrators shall and will well and truly pay the sum of pounds of lawful money of Great Britain and Ireland within months next after the said buildings and other works shall be completely built and finished to the satisfaction of the architect for the time being to be testified in writing under his hand.

Payworkmen's wages.

(21) And shall every week during the progress of the said buildings and works pay and supply the said (builders) their executors or administrators with such sums of money as shall be sufficient for paying the wages and salaries of the workmen and labourers who shall from time to time be employed in or about the said buildings and works the amount whereof shall be

ascertained by the architect for the time being by a certificate under his hand.

XI.II. RITTEDING AGREEMENTS.

titled for executing and completing the said buildings and works paid by instalas aforesaid shall be paid to them in the proportions at the times ments. and in the manner following (that is to say) such a sum of money as the said architect for the time being of the said buildings and works shall by any writing under his hand certify to be equal in amount to pounds per cent upon the value of the buildings and works which shall have been executed and performed on the now next ensuing and the value of the timber stone and other materials which shall be then upon the premises for the purpose of carrying on the said buildings and works (after deducting therefrom the sum which shall have been so previously paid in respect of the said buildings and works as hereinbefore is mentioned) shall be paid on the following Such a sum of money as the architect for the time being of the said buildings and works shall by any writing under his hand certify to be equal in amount to cent upon the value of the buildings and works which shall have and the value been executed and performed on the day of &c. &c. (as before) shall be paid on the day of sum of money equal in amount to the residue of the said sum to which the said (builders) their executors or administrators shall be entitled for executing and completing the said buildings and works as aforesaid after deducting the several payments which shall have been so made to them as hereinbefore is mentioned shall be paid at the expiration of three calendar

(22) That the sum to which the said (builders) shall be en- Price of build-

(23) That if the payments hereinbefore directed to be made on That if archithe day of the day of the day of and the day of now next ensuing as aforesaid or any to pay sum by of them shall be delayed in consequence of the neglect or re- dated damages,

months next after the whole of the said buildings and works shall have been completed or finished or (in case the amount of such sum shall not be then ascertained) so soon after that

time as the same shall be ascertained.

tect shall not certify, owners way of liquiXLII.
BUILDING
AGREEMENTS.

and interest on the several fusal of the architect for the time being of the said buildings and works to certify in manner aforesaid the value of the buildings and works of which such payments are to be made (whose decision as to such value shall be final) the said (owner or owners) their executors and administrators shall and will pay or cause to be paid to the said (builders) their executors and administrators as and by way of liquidated damages the sum of ten shillings for every day such payment shall be delayed as aforesaid together with a sum equal to what interest on the sum the payment of which shall be so delayed would amount after the rate of pounds for every one hundred pounds by the year.

Arbitration

(24) That if any difference or dispute shall at any time arise between the said parties hereto or their respective executors or administrators or between one of them and the executors or administrators of the other of them or between the said (architect) or the architect for the time being of the said buildings and works and the said (builders) or either of them their or either of their executors or administrators as to the performance or execution of all or any of the works matters and things hereby covenanted and agreed to be done and performed or the value of any works which under such direction as aforesaid shall be added to or omitted out of the present design or the construction of these presents or the said specification or plans or any matter or thing arising out of this agreement relating to the same (save and except those cases in which the decision of the architect for the time being is made final as hereinbefore is mentioned) such difference or dispute shall be referred to the award arbitrament or determination of any two persons one to be named and appointed by and on behalf of the said (owner or owners) their executors or administrators and the other by and on the behalf of the said (builders) their executors or administrators within thirty days &c. (as ante Vol. I. 367.) (38.)

XLIII. **₽**∩P EXCHANGES.

### XLIII.

### AGREEMENTS FOR EXCHANGES.

(1) (a) Whereas an exchange hath been mutually agreed to exchange. upon by the said AB and CD of the hereditaments and premises bereinafter mentioned.

(2) Now these presents witness that the said A B doth That A B will hereby for himself his heirs executors and admininistrators agree stract of one with the said CD his {heirs} and assigns that he the said AB or to CD, his {heirs} shall and will on or before the day of at his or their own expense make and deliver to the said CD a full and complete abstract of the title of him the said A B to ALL THAT &c. (parcels) (b) with the appurtenances.

(3) And if the counsel of the said C D should be of opinion and execute that the said AB hath a good title to the (c) inheritance in fee- veyance.

(a) Where brevity is not particularly desired, the seisin of the parties should be recited. See Vol I. B. (1). et seq.

(b) If the property is leasehold, say, which is held by him the said A B by an indenture bearing date &c. for the term of years" and see ante. 12. (1.)

(c) If of leaseholds, say, "to the said {messuage &c.} and premises for the remainder of the said term that he the said A B his executors or administrators and all other necessary parties shall and will on or before the in consideration of an assignment of the {piece or parcel of land} and premises hereinafter described and in the manner hereinafter mentioned assign and assure the said {messuage} and premises to the said C D his executors and administrators free from incumbrances for the remainder of the said term with the usual covenants as to his own acts that the lease by which the said premises is held is valid and subsist-

LEASEHOLDS.

LEASEHOLDS.

XLIII. FOR EXCHANGES. simple in possession of the said {messuage} and premises (a) that he the said A B or his heirs and all other necessary parties shall and will on or before the next in considerday of ation of a conveyance of the inheritance in fee-simple in possession of and in the messuage and hereditaments hereinafter described as hereinafter is mentioned execute a proper conveyance of the fee-simple and inheritance in possession of the said {messuage} and premises with the appurtenances free from incumbrances unto the said CD his heirs and assigns and with the usual covenants for title for quiet enjoyment and for further assurance.

Covenant by C D to deliver abstract to A B of the other set of parcels.

(4) And the said CD doth hereby for himself his heirs executors and administrators agree with the said A B or his {heirs} and assigns that he the said CD or his {heirs} shall and will on or before the said next at his and their own day of

Covenant to pay rent, &c. ing that the said A B has good right to assign that the rent reserved has been paid and the covenants performed for quiet enjoyment during the said term free from incumbrances and for And the said CD covenants to pay the further assurance. rent and perform the covenants and agreements reserved and contained in the same indenture of lease and to indemnify the said AB therefrom."

COPYHOLDS.

(a) If of copyholds, say,
"and premises according to the custom of the manor of
in the county of of which the same {messuage} and premises are now holden that he the said AB his executors or administrators and all other necessary parties shall and will on or before the day of in consideration of a surrender of the {pieces or parcels of land} and premises hereinafter described and in the manner hereinafter mentioned duly surrender the said {messuage} and premises hereinbefore described to the use of the said CD his heirs or assigns or as he or they shall direct to be holden at the will of the lord according to the custom of the said manor by the rent suits and services of right due and accustomed but free from all other incumbrances And also shall and will at the same time execute a deed of covenants for the title of the same premises for quiet enjoyment and for further assurance."

expense make and deliver to the said A B a full and complete abstract of the title of him the said C D to ALL THOSE &c. (a) (the other set of parcels) with the appurtenances.

XLIII. PO P EXCHANGES.

- (5) And if the counsel of the said AB should be of opinion and execute that the said C D has a good title &c. (as above (3.))
  - conveyance.
- (6) And it is hereby agreed that in each of the said con- Clause to revevances it shall be declared that neither of the parties hereto entry. shall re-enter on the lands and hereditaments given in exchange in consequence of any eviction by reason of any defect in the title of other lands and hereditaments received in exchange.
- (7) And that the costs and charges of preparing the (b) con- Costs of conveyance of the hereditaments and premises received in exchange veyance by each party shall be borne by such party.

(8) But that the costs and charges of any fine or recovery or Costs of fines, of the assignment of any term not already assigned shall be borne by the party requiring the levying suffering or assignment thereof.

(9) And it is hereby agreed that it shall be referred to Referees to de-AB of &c. and CD of &c. and in case of their differing in termine whether any moopinion to an umpire to be chosen by them to decide and deter- ney should be mine whether any and what sum of money by way of equality lity of exof exchange by either and by which of the said parties And Agreement to each of the said parties hereto agrees to pay such sum by way pay equality of equality of exchange to the other as the said referees shall And it is hereby agreed that the costs and Costs of comorder and direct charges of the said commissioners shall be equally paid by the equally paid. parties hereto.

paid for equa-

<sup>(</sup>a) If of leaseholds, see ante, p. 69, and reverse the names.

<sup>(</sup>b) If of copyholds, say, "the surrender and the deed of covenants of, &c."

LEASEHOLDS. COPYHOLDS.

XLIV. FOR PARTITION

# XLIV.

#### AGREEMENTS FOR PARTITION.

Seisin of partners.

(1) Whereas (the said joint tenants, tenants in common or coparceners) are seised of or entitled in fee-simple in possession (a) as joint tenants (tenants in common or coparceners) of or to ALL THOSE (parcels see Vol. I. B. and ante 4.)

Possession of leaseholds. (2) Whereas (b) the said (joint tenants, tenants in common or coparceners) are possessed of or well entitled to ALL THOSE {messuages} and premises situate at &c. as joint tenants (or tenants in common) for the residue of a term of years commencing on the day of

Agreement to effect partition.

(3) And whereas the said (joint tenants, tenants in common or coparceners) have mutually agreed to effectuate a partition of the said hereditaments and premises in the manner hereinafter mentioned.

Agreement that one part shall take certain premises, and another certain other premises. (4) Now THESE PRESENTS WITNESS that each of the said (joint tenants, tenants in common or coparceners) doth hereby for himself his heirs executors and administrators agree with the [others and] other of them his {heirs} and assigns in manner following (that is to say) That the said pieces or parcels of land hereinbefore described shall hereafter belong to and become the sole property of the said (one joint tenant &c.) his {heirs} and assigns

COPYHOLDS.

(a) If of copyholds, say,

"according to the custom of the manor of,"

Reversion.

If of a reversion, say,

Usual recitals.

"subject to the estate of AB of &c. for the term of his life."
(b) It is more usual to recite the lease, and the gift, bequest or intestacy, through which the parties are entitled. See the necessary recitals, Vol. I. B. 34, 35. 8. 19.

And that the said messuage or tenement and premises hereinbefore described shall hereafter belong to and become the sole property of the said (other joint tenant &c.) his {heirs} and assigns (a) And the said several parties do hereby agree to take their respective shares in lieu of their undivided moieties (or third parts or shares) in the said hereditaments and premises.

XLIV. WAR DADWINN

(5) And that AB of &c. shall be a referee nominated by Referees to be and on the behalf of the said (one joint tenant &c.) and CD of appointed to &c. a referee nominated by and on the behalf of the said (other ioint tenant &c.)

(6) And that the said referees (or commissioners) shall decide equality of and determine whether any and what sum of money shall be paid full powers. by way of equality of partition and by which of the said parties and at what time such money shall be paid And the said referees (or commissioners) shall have full power to direct either that one of the parties shall render to the other [or others] of them a yearly payment with a power of distress and entry or a sum in gross or any other equivalent not consisting of money.

(7) And if the referees (or commissioners) shall differ in Provision for opinion as to any matter relating to the said partition or the mode of carrying it into effect then the said referees (or commissioners) shall within the space of calendar months from the date hereof appoint an umpire for that purpose to whom the matter in difference shall be referred and who shall decide and determine the same within calendar months next after he shall be so appointed umpire And that the decision of such umpire shall be binding and conclusive upon the said referees (or commissioners) and also upon the said parties hereto.

ment of

(8) And it is hereby agreed that if any sum shall be directed Equality to be paid by the said referees for equality of partition then the

money to be

<sup>(</sup>a) If it is a reversion, say, " subject to the said estate of the said A B."

XLIV. FOR PARTITION

paid within three months. sum so directed to be paid shall be paid by the party directed to pay it his heirs executors or administrators within three calendar months after the said conveyance for effecting the said partition shall have been executed.

Referees to determine which of the parties shall pay rent. (9) And the said referees shall also determine which of the said parties shall during the said term pay the yearly rent of pounds to which the said {messuage} and premises are subject or in what proportion they shall pay the same and shall make all proper and necessary provisions for the payment thereof.

That referees shall make a survey. (10) And that the said referees (or commissioners) shall be and they are hereby authorised (if they or he should think fit) to make a survey of the hereditaments and premises and to cause a map or plan to be drawn thereof.

Referees to determine who shall have titledeeds. (11) And that the said referees (or commissioners) or their umpire shall decide to which of the said parties the custody of the said title-deeds relating to the said hereditaments and premises shall respectively belong and by whom and in what proportion the expenses of any attested copies or covenants for production of deeds which the said referees (or commissioners) or their umpire may declare necessary should be borne.

That deeds relating to any one part should be delivered to the party entitled thereto, and all other deeds to a third person, who shall covenant to produce them. (12) That all the deeds evidences and writings which may relate solely to the title of any one of the parts into which the said hereditaments and premises are to be divided as aforesaid shall be delivered to the person or persons who shall be entitled to such part. And that all the other deeds evidences and writings which relate to the title of the hereditaments so to be divided as aforesaid or any of them shall be deposited in the hands or custody of some third person to be mutually approved of by all the parties interested therein who shall enter into the usual covenants to produce them upon every reasonable occasion for the purpose of evidencing or making out the title to the said hereditaments and premises or any part or parts thereof when and so often as occasion shall require and to permit the same to be from time to time inspected by any person or persons interested in the

hereditaments to which the same relate but not to part with the same or any of them without the consent in writing of all the persons beneficially interested therein.

FOR PARTITION

(13) And that when it shall have been determined whether When the any and what sum of money shall be paid for equality of partition and in what manner and by which of the parties such money equality shall be settled, parshall be paid and all other preliminary matters shall have been ties will carry Then the said parties respectively and their respective effect. heirs and assigns shall with all convenient speed make do and execute all such acts deeds conveyances [surrenders] or assurances as the counsel of the said parties respectively or their respective heirs or assigns shall advise and require for the purpose of conveying and assuring the said hereditaments and premises hereby agreed to be held in severalty unto the other of them the said parties his heirs and assigns or to such uses and in such manner as he or they shall direct or appoint.

money to be paid for partition into

(14) And shall and will procure the license and consent of the Procure lord's lord or lords lady or ladies of the said manor to such surrenders or assurances and to such partition as aforesaid.

(15) And it is hereby agreed that the costs charges and ex. That expenses penses of preparing engrossing and executing this present agree- &c. to be inment and a duplicate thereof or in anywise relating thereto and of making such survey and such map as aforesaid and all other tion, shall be costs charges and expenses incurred or to be incurred in or about vided, but the partition hereby agreed to be made or in anywise relating rate conveythereto shall be paid and borne by the said parties hereto and ances to be borne by each their respective heirs executors administrators and assigns in party. equal proportions but that the costs and charges of the respective conveyances of the said hereditaments and premises to be taken in severalty as aforesaid shall be paid and borne by the party to whom the same shall be made.

of agreement, curred in effecting partiequally dicosts of sepa-

(16) And it is hereby agreed that if the said (one joint tenant's Power to apcommissioner) or any other referee (or commissioner) to be appoint new pointed by him as hereinafter is mentioned should die or refuse or

commissioners.

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XLIV. FOR PARTITION become incapable to act as referee (or commissioner) before the whole of the matters referred to him shall be determined by the said referees (or commissioners) or their umpire. Then the said (one joint tenant &c.) shall from time to time nominate and appoint some other person to be referee (or commissioner) in the place of the said (one joint tenant's commissioner) or other referee or commissioner And &c. (similar clause as to the other party or parties commissioner). And it is hereby agreed that every arbitrator so to be appointed as aforesaid shall have the same powers and authorities as are hereby vested in the said (referees or commissioners) so far as the same can be then exercised.

XLV.

## XLV.

Agreement that partition shall be made by commisaioners. (1) Now these presents witness that in pursuance of the said agreement each [and every] of the said (joint tenants, tenants in common or coparceners) doth hereby for himself his heirs executors and administrators agree with the [others and] other of them that a partition or division of all the said hereditaments and premises into [three] separate allotments of equal value or as nearly so as circumstances will permit shall be made by (a) (commissioner) of &c. to be nominated on behalf of the said (one joint tenant &c.) (commissioner) of &c. to be nominated on behalf of (other joint tenant &c.) and (commissioner) of &c. to be nominated on behalf of (third joint tenant, &c.)

Parties to draw lots for the privilege of the first choice.

(2) And it is hereby agreed that when such allotments shall have been made by the said commissioners the said parties hereto shall draw lots in such manner as the said commissioners shall appoint for the privilege of the first choice of any one of such allotments.

One commissioner.

<sup>(</sup>a) Or if one commissioner only is to be appointed, say, "by A B of &c. on behalf of all the parties hereto."

(3) And it is hereby agreed that when the said allotments shall have been made by the said commissioners they or the said umpire so to be appointed as aforesaid shall decide to which of the said parties the said allotments shall respectively belong.

XI.IV. POR PARTITION

That commissioners shall decide the allotments of the parties.

## XLVI.

XLVI.

### AGREEMENTS FOR REFERENCE TO ARBITRATION.

FOR REFER-ENCE TO AREI-TRATION.

(1) (Recite the deeds wills or facts on which the differences That differarise according to the circumstances See Vol. I. Div. B. and Index word recitals) And whereas several disputes and differences exist between the said A B and C D respecting the matters aforesaid and otherwise relating to the said premises.

ences exist.

(2) (Commencement ante I. 8.) That all disputes and differ- That disputes ences which exist between the said parties hereto [and also all other ferred to arbidisputes and differences that may at any time or times before the last ten days immediately preceding the day which shall be appointed by the arbitrator hereinafter named for his first sitting in the arbitration to be made in pursuance of these presents exist between the same parties or any of them] or any matters and things relating to or arising out of the hereinbefore recited [indentures] or any of them shall be referred to the arbitration of (arbitrator) of &c. (or arbitrators of &c.) and the award of the said arbitrator (or arbitrators) if made in writing under his hand and seal ready to be delivered to the parties hereto on or before the now next or on or before such other day of day not beyond the day of as the said arbitrator (or arbitrators) shall by writing under his hand from time to time appoint shall be binding and conclusive on the said parties hereto.

shall be retrator.

(3) And that in case the said arbitrators should not agree in Provision for any matter or thing hereinbefore referred to them the matter or ment of an matters in difference shall be referred to and determined by such umpire. one person as they the said arbitrators shall appoint for that pur-

XLVI. POR REFER-ENCE TO ARBI-TRATION. pose by writing under their hands within days after the difference shall have arisen and that the decision of such umpire thereupon shall be binding and conclusivepon the parties hereto and the said arbitrators so as the same shall be made within months after his appointment.

Reference to be made a rule of court.

(4) That for further and better enforcing the performance and observance of such award the reference or arbitration for or in respect of the same shall be made a rule of his Majesty's court of [King's Bench] at Westminster according to the statute in that case made and provided.

Parties to produce all deeds, &c.

(5) That the said parties hereto shall and will produce and show forth and deposit with the said arbitrator (or arbitrators) all such deeds evidences papers and writings relating to the said matters in dispute as shall be in the possession or power of the said parties or any of them or of any person or persons under the control of the said parties or any of them so that the said arbitrator (or arbitrators) may examine and inspect or peruse the same for the purpose of enabling him to make the said award.

Parties will do all in their power to make the award complete. (6) That the said parties hereto and each and every of them shall and will so far as in them respectively lies furnish the said arbitrator (or arbitrators) with such other evidences proofs and documents and do all such other acts and things for better enabling him (or them) to make the said award as the said arbitrator (or arbitrators) shall require.

Arbitrator to go into parol evidence, and examine parties and witnesses on oath,

(7) That the said arbitrator (or arbitrators) for the purpose of enabling him (or them) to make such award shall be at liberty to go into parol as well as written evidence and to examine the said parties in difference or any of them and such other witnesses as he (or they) shall think proper on oath the parties and witnesses to be sworn before a judge or a master in chancery or a master extraordinary in chancery.

Solicitor of each party to deliver a statement of the

(8) That the solicitor of each of the said parties hereto shall state in writing all the matters and things intended to be referred by his client to the said arbitrator (or arbitrators) at

least ten days before the day appointed by the said arbitrator (or arbitrators) for his first sitting on the said arbitration and ENCE TO AREdeliver a copy of such statement to the solicitor of each of the said other parties and only those matters and things which shall be comprehended in such respective statements shall be taken into consideration by the said arbitrator.

XI.VI. FOR REPER-TRATION.

matters intended to be referred by him.

That the said arbitrator (or arbitrators) shall give at Arbitrator to days previous notice to the solicitor of each of the said parties hereto of the day on which he intends to hold his first sitting. sitting on the said arbitation.

previous notice of his intended

That the said arbitrator (or arbitrators) or umpire shall Power to dishave full power and authority to dismiss the suit now depending in the High Court of Chancery between the parties hereto.

That nothing herein contained shall extend or be Reference not (11)construed to extend to dissolve an injunction obtained by the junction. said (one party) in the High Court of Chancery for restraining the said (other party) from proceeding at law against the said (one party) touching the matters in the said injunction mentioned But the said arbitrator (or arbitrators) shall be at liberty to take But power the proper steps for ordering the said injunction to be dissolved dissolve it. if he (or they) should think proper.

to arbitrator to

That it shall be lawful for the said arbitrator (or arbi- Power to arbitrators) from time to time by any writing or writings under their hands and endorsed upon these presents to enlarge the time for making their award in the said matters in difference so as the last extension of the time for making the said award does which will be in the year of our not exceed the day of Lord

trator to enlarge time.

That it shall be lawful for the said arbitrators to pro- Power to arbiceed exparte in the said several matters so referred to them in trators to proceed exparte. case of the non-attendance of either of the said parties hereto days previous notice in writing being given him for that purpose or left at his usual place of abode.

XLVI. FOR R EPER-ENCE TO ARBI-TRATION.

To keep the

(14) That they the said parties hereto respectively and their respective executors and administrators shall and will well and truly keep observe and perform the award order and final arbitraments of the said arbitrator (or arbitrators) or of such other person as he (or they) shall appoint as hereinbefore is mentioned respecting all the matters so referred to him (or them) as aforesaid so as the said award shall be delivered to the said parties at the time and in the manner hereinbefore mentioned.

The costs of the arbitration shall be at the discretion of arbitrator.

(15) And that all costs and charges attending the said arbitration shall be at the discretion of the said arbitrator and shall be paid and satisfied pursuant to his award.

No suit to be brought in relation to the premises. (16) And lastly that neither of the said parties shall bring any action or commence any suit against the other of them in relation to the premises or against the arbitrator (or arbitrators) unless fraud or collusion be discovered in the said award. (a)

XLVII.

## XLVII.

MISCELLA-NEOUS AGREE-MENTS.

Agreement to enfranchise.

### MISCELLANEOUS AGREEMENTS.

(1) First the said (lord) doth hereby for himself his heirs executors and administrators agree with the said (tenant) that he the said (lord) shall sell the fee-simple and inheritance in possession of and in All that &c. (parcels) with the appurtenances and which is now held for an estate of inheritance by the said (tenant) by copy of court roll according to the custom of the manor of free from incumbrances and absolutely enfranchised and discharged from all manner of rents fines heriots fealty suits and services whatsoever at or for the price or sum of pounds.

<sup>(</sup>a) For other provisions on a reference to arbitration, see post class Bond.

(2) And also that the said (lord) or his heirs and all other months from the date hereof necessary parties shall within pounds and at the costs and And execute on receiving the said sum of charges of the said (tenant) execute a proper conveyance and ance. assurance or conveyances and assurances with the usual covenants for the title for quiet enjoyment and for further assurance of the fee-simple and inheritance of the said {messuage &c.} and premises with the appurtenances free from incumbrances and enfranchised as aforesaid unto the said (tenant) his heirs and assigns or as he or they shall direct. (a)

MISCELLANEOUS

proper convev-

### XLVIII.

XLVIII.

(1) Whereas the said (author) has written and composed a Contract for and the same is now ready purchase of copyright. certain work entituled for the press And the said (publisher) has contracted for the purchase of the copyright of the said work at or for the price or pounds to be paid in the manner hereinafter sum of mentioned.

(2) Now these presents witness that the said (author) Agreement to agrees to sell and the said (purchaser) agrees to purchase ALL THAT the said work and premises and the copyright thereof.

(3) And it is hereby agreed that the said work shall consist Work to conοf sheets [royal octavo].

sist of sheets.

(4) And that the said (author) shall correct the said sheets of Author to corthe said work through the press and compose a good and sufficient index thereto and in every respect prepare the same for publi-

and complete within

(a) Add agreement by the lord to produce deeds, ante p. 19, (1) Reference to that expenses of fine and recovery shall be paid by him, ante p. 9, other clauses. (8) agreement by tenant to pay purchase-money ante p. 8, (5) and (if so) agreement by lord to furnish abstract, ante p. 7, (2) clause to enforce performance of contract as ante p. 29, (1) or any other special provision for which the index to the forms may be consulted.

XLVIII. MISCELLANEOUS cation and complete the same within

calendar months from

And will assign the copyright thereof. (5) And shall and will within days after the publication thereof or at any time or times thereafter if so required by the said (publisher) by such good and sufficient conveyances and assignments in the law as the said (publisher) or his counsel shall advise and require assign and make over the said work and all his right title and interest in the copyright thereof unto the said (publisher) his executors administrators or assigns.

That the publisher shall pay the purchase money by instalments. (6) And that the said (publisher) shall pay the said sum of pounds in the manner hereinafter mentioned (that is to say) the sum of pounds on the day of the publication of the said work and the sum of pounds (the residue thereof) within three months after the publication thereof.

And all expenses of the publication. (7) And shall and will cause the said work to be printed on good paper and pay and defray all the costs expenses of printing and advertising the said work and all other expenses attending its publication.

Allow copies

(8) And shall and will allow copies of the said work to the said (author).

Exert himself for the sale.

(9) And shall and will exert himself to the utmost in procuring and advancing the sale of the said work.

In case of second edition author agrees to make the same as complete as possible. (10) And it is hereby agreed that in case a second third or any other succeeding edition of the said work shall at any time be called for the said (author) agrees to make all necessary additions alterations and corrections to such edition and to make the same as complete as possible.

And assign the copyright thereof.

(11) And shall from time to time within days after the publication thereof or at any time or times thereafter if so required by the said (publisher) by such good and sufficient conveyances and assignments in the law as the said (publisher) or

his counsel in the law shall advise and require assign and make over the said second third or other succeeding edition of the said work and all his right title and interest in the copyright thereof unto the said (publisher) his executors administrators or assigns.

XI.VIII. MISCELLANEOUS

(12) And that he the said (publisher) shall pay the sum of Publisher to pounds to the said (author) on the day of the publication of such second third and every subsequent edition And shall and will pay and sustain all the costs and charges of such second third and every subsequent edition in the same manner as is hereinbefore agreed upon respecting the first edition.

pay the sum of pounds.

(13) And it is hereby agreed that in case the said (author) If author should refuse to edit such second third or subsequent edition or should refuse, neglect so to edit the same after six months notice to him for lisher to enthat purpose given by the said (publisher) it shall be lawful for editor. the said (publisher) to engage with any other person or persons to edit the same.'

### XLVIII a.

XLVIII a.

And it is hereby agreed that after paying and defraying all Profits to be such expenses as aforesaid the net proceeds and profits as well tween author of the first as all every other succeeding edition shall be equally and publisher. divided between the said (author) and (publisher.)

### XLVIII b.

XLVIII b.

(1) Whereas the said (author) is the author and proprietor Property of And whereas there is now a work in author. of a certain work entituled ] edition. demand for a new edition of such work being the [

XLVIII b.
MISCELLANEOUS
That publisher shall publish the work by commission.

(2) Now these presents witness that the said (author) doth hereby agree with the said (publisher) that he the said (publisher) shall be the sole publisher of the said edition of the said work at a commission of pounds per cent.

Author will furnish copy.

(3) And that he the said (author) will within days next hereafter deliver to such printer as the said (publisher) shall name a portion of the copy of the said work and continue to supply him with copy thereof until the whole is completed.

Publisher to indemnify author from all loss. (4) And that the said (publisher) shall indemnify the said (author) from all losses to be incurred as well in the printing and publishing of the said work as after its publication or by reason of the said work not selling.

Publisher may pay expenses out of proceeds. (5) And it is hereby agreed that it shall be lawful for the said (publisher) out of the profits and proceeds of the said work in the first place to deduct and repay himself the expenses of the paper printing advertisements warehouse-room insurancemoney and commission after the rate aforesaid And that he the said (publisher) will render a full and faithful account to the said (author) on the day of and on the day of in every year of the sale and proceeds of the said edition.

#### XLVIII c.

## XLVIII c.

That publisher has lately published a certain work.

(1) Whereas the said (publisher) some time since published a certain work written and composed by (author) and entituled (state the title.)

Demand for a new edition.

(2) And whereas there is a demand for a new edition of the said work.

That editor has agreed to edit the same.

(3) And whereas the said (publisher) hath agreed with the said (editor) to edit and make ready for publication as hereinafter is mentioned a new edition (being the [ ]) of the

said work to be contained in volumes I for the sum of MINCRIA N BOILS pounds.

(4) Now therefore these presents witness that Testatum the said (editor) in consideration of the sum of of lawful money of Great Britain and Ireland to be paid to him by the said (publisher) in the manner hereinafter mentioned agrees with the said (publisher) that he will edit and prepare Editor agrees for publication the ! ledition of the said work.

wherehy in pounds consideration of the sum of pounds.

- (5) And will also examine and correct the proof sheets and correct the proof sheets. of the said work in its progress through the press.
- (6) And that he will complete and render fit for publication the [first volume of the] said work by the next [the second volume by the day of &c. (according to the number of volumes.) ]

and complete the work by the day

(7) And further that he the said (editor) will render the said ledition of the said work as complete as possible and and make all will make all necessary and proper additions and corrections and tions thereto. add such observations and information to the said work as shall occur to him and exert himself to the utmost to render the said work valuable and popular.

(8) And the said (publisher) agrees to pay unto the said (editor) for editing the said [three] volumes the said sum of pounds in the proportions and at the time hereinafter mentioned pounds being one-[third] part tion as herein-(that is to say) the sum of thereof on the first of the said volumes being ready for publica- tioned. tion and the like sum of pounds on each of them the second and third of the said three volumes (or according to the number of volumes) being ready for publication. (a)

Agreement by publisher to pay remuneraafter is men-

One instal-

<sup>(</sup>a) If the whole is to be paid at one instalment, say, " the sum of pounds of lawful money of Great Britain ment. and Ireland on the day of the publication of the said work."

XI.VIII d. MINCELL ANDROTES

XI.VIII d.

### XLVIII d.

That a work has been published abroad.

(1) Whereas a certain work has lately been published in Germany in the German language entituled (state the title).

And that publisher is desirous of baying a translation.

(2) And whereas the (publisher) is desirous that a translation of the said work should be made and perfected by the said (editor).

Agreement to translate

(3) Now these presents witness that in consideration of the payment of the sum hereinafter mentioned to him the said (editor) he the said (editor) agrees that he will well and faithfully translate the said work into English and will complete the same on or before the day of

XLVIII e.

### XLVIII e.

have engraving. Agreement to

Desire to

engrave.

(1) Whereas the said (publisher) is desirous of publishing a line (or mezzotinto) engraving of a certain painting called &c. and painted by Mr. Now these presents witness that in consideration of the sum of pounds to be paid in the manner hereinafter mentioned he the said (engraver) agrees that he will at his own cost and charges engrave and execute a perfect and correct line (or mezzotinto) engraving on copper (or steel) plate of the said painting called &c.

Size of engraving.

(2) And that the said engraving shall be inches long and inches broad and that the copper on which the same shall be engraved shall be inches long and inches broad.

(3) And that the said (engraver) will complete the same on or before the day of

YI.VIII a MISCELLANEOUS

Time of completion.

(4) And shall at his own expense take off and print plete impressions from the said plate on good and proper paper and deliver them to the said (publisher).

Number of impressions.

(5) And the said (publisher) agrees to pay the said sum of Payment of pounds in the manner hereinafter that is to say the sum and the sum of Λf pounds on the day of pounds (the residue thereof) on the if the said work day of shall be completed at such last mentioned time.

(6) And it is hereby agreed that the said (engraver) shall be Number of coallowed to retain complete impressions of the said engraving graver is to for the use of himself and friends but it shall not (a) be lawful for the said (engraver) to sell or dispose of the same.

## XLIX.

XLIX.

(1) Whereas the said (principals) carry on the trade or busi- That princiness of in the county of at

pals carry on trade.

(2) And whereas the said (principals) have requested the said And agree-(factor) to act as their agent or factor in the vending of in the city of for the term of years.

ment with factor.

(3) And that the said agency shall be carried on in

That agency shall be carried on in street.

(a) Since the late case of Murray v. Heath, in which the ques- Practical dition as to the right of an engraver to dispose of his copies was rection. agitated, (but which I believe has not yet been determined,) a clause of this nature should be inserted.

XLIX. MISCELLANEOUS street in the city of or in such other house as shall from time to time be appointed by the said (*principals*) or the survivor of them.

Witnessing part. Agreement by factor to receive all goods consigned to him, and to warehouse the same.

(4) Now these presents witness that in pursuance of the said agreement and in consideration of the covenants and agreements hereinafter entered into by the said (principals) he the said (factor) for himself his heirs executors and administrators doth hereby covenant and agree with the said (principals) and each of them and with their and each of their executors administrators and assigns (that is to say) that he the said (factor) shall and will receive all such goods and merchandise as shall be transmitted or consigned to him by the said (principals) or either of them and carefully warehouse and keep the same in the warehouses belonging to the said (principals) in street aforesaid.

Exert himself for the benefit of the concern. (5) And that he the said (factor) shall and will zealously and actively exert himself for the benefit of the said concern and in the sale of the goods and merchandise so transmitted and consigned to him.

Shall not engage in any other concern.

(6) And shall and will give the whole of his time and attention to the said concern and shall not engage in the trade or business of a seller of or in any other business whatsoever either on his own account or as a factor or agent alone or in copartnership with any other person or persons without the consent in writing of the said (principals) or the survivor of them first had and obtained.

Obey orders of principals.

(7) And that he the said (factor) shall and will in managing the said concern conform to and obey such orders instructions and directions as he may from time to time receive from the said (principals) or the survivor of them and where no such direction shall be given shall and will act in such manner as he shall judge to be most conducive to the advantage of the said (principals) and of the survivor of them.

And where no orders are given shall act according to his judgment.

(8) And shall and will use every exertion to sell and dispose of the said goods and merchandise at such price or prices as the said (principals) or the survivor of them shall by any writing price fixed by under their hands direct And if he shall receive no such directions then the said (factor) shall sell and dispose of the same at the highest price or prices which can be obtained for the same.

MISCRI, LANGOUS

Sell goods at principals, and if no directions at the highest

(9) And that he the said (factor) shall and will use his Endeavour to utmost exertions to procure the greatest possible sale of the procure the greatest sale goods and merchandise which he shall be employed to sell as the goods. such (factor) as aforesaid either for ready money or on credit to persons of responsibility.

(10) And that if he shall sell any part of the said goods and Ascertain chamerchandise upon credit he the said (factor) shall and will satisfy racter of debtors. himself and make all possible enquiries as to the respectability of the persons applying to purchase on credit and whether they are persons of responsibility and shall and will make a correct minute of the result of such enquiries.

(11) And that he the said (factor) shall not give credit to any Shall not give person or persons for a greater length of time than months without the consent in writing of the said (principals) or the survivor of them.

credit beyond

(12) And shall not without such consent sell on credit goods Nor give credit of a greater value or to a greater amount than the sum of pounds to any person or persons whomsoever.

to a greater amount than pounds.

(13) And that he the said (factor) shall and will from time And will acto time if he shall have assets in his hands accept and pay all such bill and bills of exchange as may be drawn upon him by the said (principals) or the survivor of them and of which he shall receive due notice from them or the survivor of them.

(14) And that he the said (factor) shall and will out of the And shall pay clerk,

XLIX.
MIRCELLANEOUS

commission (or salary) hereinafter agreed to be retained or paid to him find provide and pay a fit and proper person as clerk for the purpose of assisting him the said (factor) in the management of the said concern.

And porter.

(15) And that he the said (factor) shall and will out of such commission (or salary) provide and pay a porter for the purpose of assisting in the said concern.

Shall give a monthly account of all the matters relating to the concern. (16) And also shall and will from time to time on the first day of each and every month transmit to the said (principals) and to the survivor of them a full and correct statement in writing of all goods which may have come to his hands and also of all such goods as he may have sold the respective times when they were sold and to whom and whether for ready money or on credit and of all such other matters and things as in anywise relate to the said concern.

That he will pay over receipts twice a year. (17) And also that he the said (factor) shall and will on the day of and the day of account for transmit and pay over to the said (principals) or the survivor of them all monies bills notes and securities for money which shall be received or which shall come to the hands of the said (factor) which shall arise from the sale of the said goods and merchandise by the said (factor) as such factor or agent as aforesaid.

And keep books of account. (18) And that he the said (factor) shall and will keep all necessary and proper books of account and ledgers in which shall be made full and correct entries of all goods and merchandise received from the said (principals) or the survivor of them And also of all goods and merchandise which shall be sold by him the said (factor) as such factor or agent as aforesaid and the prices at which and the times when the persons to whom the same were sold and of all other matters transactions and things which in anywise relate to the said concern And which said books of account and ledgers and all bills papers and writings belonging or relating to the said concern shall at all times be open to the inspection of the said (principals) or the survivor of

To be open to inspection of principals.

them and their and each of their executors and administrators solicitors and agents with full liberty for them or any of them to make extracts therefrom.

MISCRI J. ANDOTTS

(19) And that the said (factor) shall and will on the of and the day of in each and every year accurately twice a-year. cast up and balance the said books of account in order that the true state of the said concern may clearly appear.

day Factor to adiust balance

(20) And that the said (factor) shall and will preserve and preserve and keep the said books of account papers documents and account. writings (damage by fire and other inevitable accidents excepted.)

(21) And shall and will upon the final settlement and termi- and deliver up nation of the said concern deliver up all such goods and merchandise as shall then remain unsold or which shall be in his his hands, and And also the said books documents and writings all books, &c. undefaced and unobliterated to the said (principals) or the survivor of them his executors or administrators.

(22) And the said (principals) in consideration of the cove- Covenant by nants and agreements hereby entered into by the said (factor) principals. do hereby for themselves and each of them doth for himself and for their and each of their heirs executors and administrators covenant and agree with the said (factor) his executors administrators and assigns in manner following (that is to say)

(23) That the said (principals) and the survivor of them To consign shall and will transmit consign and deliver at their own costs own costs, and charges unto the said (factor) the said goods and merchandise.

(24) And that the said (factor) during such time as the said and (factor) shall act as agent to the said concern may retain and mission. pay unto himself the sum of pounds for every one hundred pounds worth of the said goods and merchandise which shall

XLIX. MISCELLANEOUR be sold by the said (factor) on the account of the said (principals) and so for every less quantity than one hundred pounds which may be so sold.

Pav salarv.

(25) And that the said (principals) and their respective heirs executors and administrators or some or one of them shall vearly and every year during such time as the said (factor) shall act as their agent or factor as aforesaid well and truly pay or cause to be paid unto the said (factor) the salary of pounds a-year of lawful money of Great Britain and Ireland to be payable by equal quarterly payments the first payment thereof to begin and be made on the day of next ensuing the date of these presents.

Will pay all expenses incurred.

(26) And that they the said (principals) shall and will pay unto the said (factor) his executors or administrators or suffer him or them to retain in the half yearly settlement of the accounts of the said concern all such sum or sums of money as he may have paid or laid out or incurred for or on account of repairing the said house books paper stationary carriage of parcels and postage of letters or otherwise in the management of the said concern.

That factor may reside in house.

(27) And that the said (factor) during such time as he shall act as such factor or agent as aforesaid shall and may with his family and servants reside in the said house over the said shop or warehouses in street aforesaid free from the payment of rent or taxes for the same.

Will not appoint other agent.

(28) And that neither they nor the survivor of them shall or will within the said period of years appoint or employ any other person as a factor or agent for the sale of the said goods and merchandise within the said city of during such time as the said (factor) shall act as such factor or agent as aforesaid.

Appointment of factor to be principal.

(29) And for the purpose of better enabling the said (facthe attorney of tor) to receive and get in all debts and sums of money for or on account of any goods and merchandise which may be

sold by him as such factor or agent as aforesaid they the said (principals) have constituted and appointed and by these presents do constitute and appoint the said (factor) their true and lawful attorney for them in their names and for their use to ask sue for recover and receive all such sum or sums of money as shall or may be due or owing from any person or persons for or on account of any goods or merchandise sold by him as their agent or factor as aforesaid and to give receipts and sufficient discharges for the same And they the said (principals) hereby agree to ratify and confirm whatever he the said (factor) shall lawfully do or cause to be done in and about the premises.(a)

XLIX. MISCELLANEOUS

(30) Provided nevertheless and it is hereby agreed between the Factor not to parties hereto that the said (factor) his executors or administrafor accidents. tors shall not be answerable for any loss or damage which may happen to any goods or merchandise which may be sent to him before the same shall come to his hands or custody nor for any loss or damage which may happen to any goods or merchandise which may actually come to his hands or custody and which may be sent by the said (factor) to any customer or for any other loss or damage which may happen to any of the goods or merchandise committed to his charge or care unless such loss or damage happens through his wilful neglect or default.

(31) Provided nevertheless and it is hereby agreed by and be- Provision for tween the parties hereto that in case the said parties hereto or of the agreeeither of them shall at any time before the expiration of the said ment. years be desirous of giving up the said and putting an end to the said agreement entered into by these presents it shall and may be lawful for them or him so to do upon giving six calendar months previous notice in writing to the others or other of them of such his or their desire or by leaving such notice at their or his usual place or places of abode.

<sup>(</sup>a) See another form of a power of attorney, Vol. I. p. 54. Other form.

XLIX.

Provision for referring disputes to arbitration.

(32) And it is hereby agreed by and between the parties hereto that if any dispute or difference shall at any time or times arise or happen between the said (factor) on the one part and the said (principals) or the survivor of them their respective executors or administrators or any of them on the other part for or on account of any matter or thing herein contained which shall not within one calendar month after the same shall arise be decided by the parties in difference themselves Then and so often and in every such case such difference or dispute shall from time to time upon the request of any of the parties in difference be reduced into writing and be referred to the hearing of two indifferent persons to be chosen one by the said (factor) his executors or administrators and the other by the said (principals) and the survivor of them such arbitrators to be chosen within the space of two calendar months next after such request as aforesaid And the award order and determination of the said two persons so to be chosen as aforesaid in the matters referred to them shall be binding and conclusive upon the parties in difference their respective executors and administrators and shall be performed observed and kept by them accordingly provided such award order or determination shall be in writing under the hands and seals of the persons making the same and ready to be shewn to the persons concerned within days next after the appointment of the said the space of (arbitrators) for that purpose And for the better enforcing the performance and observance of every such award the same shall from time to time be made a rule of the court of King's Bench according to the statute in that case made and provided. (a)

Other Provisions.

<sup>(</sup>a) For other provisions as to reference to arbitration, See ante, p. 77.

MISCRI I ANDOLIO

L.

I do hereby charge and for myself and my heirs do agree to Agreement to execute every act and deed that shall by A B of &c. his executors administrators or assigns or his or their counsel in the ment of the law be reasonably required or deemed necessary for the better pounds and and more effectually charging either by mortgage in fee or for a term of years or otherwise All my freehold and copyhold messuages and tenements situate and being at &c. in the county of

sum of

or elsewhere with the payment of the said sum of pounds at or before the expiration of one year from the date of these presents with interest for the same after the rate of five pounds for the hundred pounds by the year.

LI.

LI.

(1) It is hereby agreed that in consideration of the natural Agreement to affection which the said A B bears to the said C D He the said pay sum to trustees for the A B doth hereby for himself his heirs executors and administrators covenant and agree with and to the said C D his executors ther. administrators and assigns that he the said A B his executors or administrators shall and will on or before the day of next well and truly pay or cause to be paid to (trustee) of &c. the sum of pounds of lawful money of Great Britain and Ireland to be by him applied in discharge of the debts of the said C D mentioned and specified in the schedule to these presents annexed so far as the same sum will extend And if the said sum shall be more than sufficient for that purpose then that the said (trustee) shall pay the surplus thereof unto the said C D his executors administrators and assigns.

LI. MISCELLANEOUS

Agreement to receive the said sum in full discharge of all claims respecting a legacy.

(2) And the said C D in consideration of the aforesaid covenant and agreement of the said A B doth hereby for himself and Mary his wife and for his and her executors and administrators covenant and agree with and to the said A B that they the said C D and Mary his wife shall and will take and accept the said sum of pounds to be applied in manner aforesaid in full discharge of all claims and demands which he the said C D or Mary his wife or either of them now have or can or may have upon the said A B his executors or administrators for or in respect of the (a) said legacy or sum of pounds or the interest thereof or of any part thereof or for or in respect of any other matter or thing whatsoever.

LI a.

## LI a.

Agreement to pay a debt.

Whereas (b) the said (debtor) is indebted to the said (creditor) in the sum of pounds It is hereby agreed between the parties hereto that in consideration of the moral obligation of paying his debts (or of the sum of pounds of lawful money of Great Britain and Ireland to him paid by the said (creditor) (or any (c) other present or future benefit done to the debtor) He the said (debtor) for himself his heirs executors and administrators hereby covenants and agrees with the said (creditor) his executors or administrators that he the said (debtor)

Recital.

Practical direction.

<sup>(</sup>a) The will bequeathing the legacy should be recited.—See Vol. I. B.

<sup>(</sup>b) It is not necessary in any case to recite the way or the time in which the debt was contracted. In the case of an infant or bankrupt agreeing to pay a debt which is barred either by the infancy or the commission, it is better these circumstances should not appear on the face of the agreement, but that the above simple acknowledgment should be taken.

<sup>(</sup>c) In agreement of this nature some present or future consideration must always be expressed.—See Stead v. Liddard 8 Moore 2, Morley v. Boothby, 3 Bing. 107. See as to considerations in general, Vol. I. p. 31.

his heirs executors or administrators shall on or before the pay or cause to be paid unto the said (creditor) his day of executors or administrators the said sum of pounds.

I.I a. MISCELLANEOUS

# LI b.

LI b.

(Recite the commencement of chancery proceedings, Vol. I. B. Agreement to dismiss suit, 47.) And the said parties hereto have agreed that the said suit shall be forthwith dismissed without costs Now THESE PRE-SENTS WITNESS that he the said A B shall and will immediately That A B will after the execution of this agreement either by motion or petition to be disto the said Court of Chancery obtain an order that the said bill missed. shall stand dismissed out of Court.

# Ll c.

LI c.

Whereas the said C D is seised of or well entitled to the ad- Seisin of advowson or perpetual right of presentation in the parish church And whereas Y Y of &c. That Y Y is at in the county of clerk is the present incumbent of the said rectory or parish church bent. Now these presents witness (a) that in consideration of pounds of lawful money of Great Britain and Ireland by the said A B to the said C D this day well and truly

present incum-

<sup>(</sup>a) If this agreement is not under seal, it will not be deemed Quære whether a conveyance or assignment of the next presentation, and, therefore, is not liable to ad valorem duty. Wilmot v. Wilkinson, sentation 6 B. and C. 506. It may, therefore, deserve consideration whe- should not alther an assignment of a next presentation should not always run the form of an in the form of an agreement, as the saving, in many instances, agreement. may be very considerable, and as such an agreement can always be enforced by a sum to be paid by way of stipulated damages on breach of the agreement, or in a court of equity.

LI c.
MISCELLANEOUS
Agreement
that on a vacancy C D will
present such
person as A B
shall appoint.

paid (the receipt whereof is hereby acknowledged) the said C D agrees when and so soon as the said rectory or parish church shall became void by the death resignation or deprivation of the said Y Y or otherwise howsoever he the said C D will present to the said rectory and parish church such fit and qualified person as the said A B shall by any writing under his hand direct and appoint (agreement as to stipulated damages on breach of the agreement see post XXIII. 1.)

LI d.

# LI d.

Agreement to apply to parliament. (1) (Recite the facts which render an act necessary.) Now THESE PRESENTS WITNESS that it hath been agreed by the parties hereto that an application shall be made to parliament in the ensuing (or present) session or as soon thereafter as may be for an act for, &c. (according to the circumstances of the case.)

Act to contain all proper clauses. (2) And it is hereby agreed that in the said act there shall be inserted all necessary usual and proper clauses for effecting the purposes for which the said act shall be obtained.

Parties not to obstruct the passing of the act. (3) And it is hereby agreed by the parties hereto that neither they nor any of them will oppose obstruct or petition (a) against the said act in its progress through the houses of parliament but will as far as is in their power assist and further the passing thereof.

Agreement not to oppose an act of parliament. (a) It was decided in the case of Vauxhall Bridge Company v. Earl Spencer, 2 Madd. 356, that an agreement secretly entered into, during the pendency of a bill in parliament, not to petition against it, is void, as contrary to public policy. The clause, therefore, above given, although usual in similar agreements, is rendered very questionable.

(4) And it is hereby agreed that each and every of the parties hereto shall and will bear pay and sustain an equal portion of the costs and expenses which shall arise or be incurred in procuring and passing the said act of parliament or in any way con- equal share of nected therewith.

LI d. MISCELLANBOUS

Every party to gustain an

(5) And it is hereby agreed that AB of &c. gentleman shall AB to be the be the solicitor to be employed in procuring and obtaining the obtaining the said act of parliament.

## LII.

LII.

CONCLUSIONS.

CONCLUSIONS.

(1) As witness their hands

AB

 $\mathbf{C}$   $\mathbf{D}$ 

(2) In witness (a) whereof the said several parties have Another form. hereunto respectively put their hands and seals this

A B

CD

(3) In WITNESS whereof the said (lessor) by the said [A B] Where an atas his attorney lawfully authorised for this purpose and the said for a principal. (lessee) have hereto set their hands and seals

(lessor)

(lessee)

by

**[A B]** 

(4) Witness (b) my hand this day of

By one.

(a) For other forms of execution and attestation, see Vol. I. Other forms.

(b) This conclusion should be inserted when the agreement Practical diruns in the first person.

STAMPS AFFECTING AGREEMENTS.

55 Geo. III. c. 184. Agreements, \*\*\* The principal rules as to stamping agreements will be here briefly considered.

The portion of the schedule of the General Stamp Act, 55

Geo. III. c. 184, relating to agreements, is as follows:

"Agreement or any minute or memorandum of an agreement made in England under hand only, or made in Scotland, without any clause of registration, (and not otherwise charged in this schedule, nor expressly exempted from stamp duty,) where the matter thereof shall be of the value of twenty pounds or upwards, whether the same shall be only evidence of contract, or obligatory upon the parties from its being a written instrument, together with every schedule, receipt, or other matter, put or indorsed thereon or annexed thereto;

Where the same shall not contain more than 1080 words, (being the amount of fifteen common law folios, or sheets of

seventy-two words each) £1.

And where the same shall contain more than 1080 words, £1 15s.

And for every entire quantity of 1080 words contained therein, over and above the first 1080 words, a further progressive duty of  $\mathcal{L}1$  5s.

Letters containing agreements. Provided always that where divers letters shall be offered in evidence to prove any agreement between the parties who shall have written such letters, it shall be sufficient if any one of such letters shall be stamped with a duty of £1 15s. although the same shall in the whole contain twice the number of 1080 words or upwards.

Exemptions.

Memorandums of insurance.

Exemptions from the preceding and all other stamp duties.

lst. Label, slip, or memorandum, containing the heads of insurances to be made by the corporations of the Royal Exchange Assurance and London Assurance, or by the corporations of the Royal Exchange Assurance of houses and goods from fire and London Assurance of houses and goods from fire.

Agreement for lease of premises under five pounds. Hire of servant.

2d. Memorandum or agreement for granting a lease or tack at rack-rent, of any messuage, land, or tenement under the yearly rent of £5.

Agreement for goods.

3d. Memorandum or agreement, for the hire of any labourer artificer, manufacturer, or menial servant.

Agreement on voyage.

4th. Memorandum, letter, or agreement, made for, or relating to, the sale of any goods, wares, or merchandise.

5th. Memorandum of agreement made between the master or mariners of any ship or vessel, for wages on any voyage, coastwise from port to port in Great Britain. (a)

6th. Letters containing any agreement (not before exempted) in respect of any merchandise or evidence of such an agreement which shall pass by the post between merchants or other persons carrying on trade or commerce in Great Britain, and residing and actually being at the time of sending such letters at the distance of fifty miles from each other." (a)

These clauses relate, however, only to agreements not under seal: for if an agreement be under seal it is a deed, and requires a deed-stamp of £1 15s. as a deed not otherwise charged. Clayton v. Burtenshaw, 5 B. & C. 41. Munn v. Godbold, 2 Car. & Pay. 97. 3 Bing 292. S.C. 11 J.B. Moor. 49. S.C.

But where an instrument is not under seal, and purports to be a conveyance or assignment of property, but cannot of course operate as such, not being under seal; if there be a stipulation rate as an or covenant for quiet enjoyment therein, it may operate as an agreement. Thus also an agreement. Rex v. Ridgwell, 6 B. & C. 665. agreement for a valuable consideration to present the nominee of A, if not under seal, is not a conveyance, and does not require Wilmot v. Wilkinson, 6 B. & C. 506. and an ad valorem duty. ante p. 97.

In counting the words, figures are to be counted as words, How instruand as to what will be counted see Lord Dudley v. Robins. 3 ment is to be Car. & Pay. 26.

An agreement cannot in any case be given in evidence unless it is stamped. Doe d. St. John v. Hore. 2 Esp. 724.

Although an agreement runs in the first person, as "I A B agree, &c." it is binding on the person so agreeing, and must agreement be stamped as an agreement. Knight v. Crockford, 1 Esp. may run. N. P. C. 190. But it must be signed by the party to be charged or his agent. Drant v. Brown, 3 B. & C. 665. Ramsbottom v. Tunbridge, 2 Mau. & Sel. 434. Ramsbottom v. Mortley, 2 Mau. & Sel. 445. Dalison v. Stark, 4 Esp. 163. Adams v. Fair- Unsigned pabairn, 2 Stark. 277. And an unsigned paper therefore need not pers need not be stamped, and parol evidence may be given of its contents.

Where all the parties to an agreement have a community of Where more interest in the subject-matter of the agreement, as where there than one stamp is an agreement by several as to a common fund for their mutual is necessary. benefit. Davis v. Williams, 13 East 232. or to refer a cause to arbitration. Goodson v. Forbes, 1 Marsh. 530. or an assignment by sailors of their several shares in their prize-money. Baker v. Jardine, 13 East 235, n. (b.) Doe d. Copley v. Day, 13 East 246, however numerous the parties may be, only one stamp is necessary.

But where the parties have distinct interests, (see cases last cited.) there must then be as many stamps as there are dis-

STAMPS APPROTENCE AGREEMENTS.

Letters between merchants fifty miles apart.

Agreements under seal are deeds,andmust be stamped accordingly.

Instrument in the form of a deed may ope-

Form in which

STAMPS
APPECTING
AGREEMENTS.

tinct parties. But where there are several parties to the agreement, and some parties names appear to have been erased; but as the deed stands, there appears to be as many stamps as parties, this will be sufficient. Waddington v. Francis, 5 Esp. 182. And it was held, that the proof of there having been other parties at the time of the stamping, and that the stamp is not affixed to the defendant's name, lies on the defendant, ib. Powell v. Edmunds, 12 East, 6. Doed. Copley v. Day, 13 East, 241.

Where one agreement incorporates another. Where an agreement refers to another, and incorporates it, as where it is stipulated that a clause in a previous agreement duly stamped shall be taken as part of the new agreement, this distinction exists. If the agreement referred to is duly stamped, no additional stamp is payable on account of the reference; but if it is not stamped, then an additional stamp is payable. So also if an agreement contain less than 1080 words, and the agreement referred to, if added to the other, would increase it to more than 1080 words, yet if the agreement referred to be duly stamped, a £1 stamp only is payable, but otherwise, the increase must be paid for as before mentioned. Attwood v. Small, 3 Car. & Pay. 208. 7 B. & C. 390. 1 Man. & Ry. 246.

Where an agreement has the operation of another instrument.

Where an agreement contains a clause which gives it the operation of another instrument; as where in an agreement for the sale of a house, a clause was inserted, binding the parties to the performance of it, under a penalty, an agreement-stamp, and not a bond stamp, was held alone sufficient. Knight v. Crockford, 1 Esp. 190.

And where the agreement is by deed, with a penalty for the performance of it, a deed-stamp of £1 15s. is sufficient. Mounsey v. Stephenson, 7 B. & C. 403.; in which case it will be observed, on attentively perusing it, the agreement was by deed.

Where other matter in agreement will be held to surplusage.

Where an instrument which, according to one of its purposes, is duly stamped, also contains words relating to another matter, if these words do not control or qualify its first object as, utile per inutile non vitiatur, the words relating to the other matter, will be treated as surplusage. Grey v. Smith, 1 Camp. 387.

And receipts may be given in evidence of an agreement without being stamped as an agreement. Watkins v. Hewlett, 1

Brod. & Bing. 1. 3 J. B. Moor. 211. S. C.

Where deed contains a collateral agreement, But if a deed, besides the clauses intended to effect its first purpose, contain also an agreement for the purchase of goods, it must not only have a stamp in respect of the principal matter, but also a deed-stamp of £1 15s. for the agreement. Clayton v. Burtenshaw, 5 B. & C. 41. But if the agreement strictly be for a part of the subject matter of the deed, as in a lease, for the fixtures belonging to the house, then it will be held to be one entire contract; and one deed-stamp, according to the nature of the deed, will be sufficient. Corder v. Drakeford, 3 Taunt, 382. Neal v. Vining, 1 Camp. 471.

Where the value of the subject-matter is uncertain, as it may be

under as well as over twenty pounds, no stamp need be affixed; as where the agreement contained a contract of marriage, its value was held to be uncertain, and therefore no stamp was necessary.

Orford v. Cole. 2 Stark. 351.

An unstamped receipt for goods, given by a wharfinger or car- Where subject An unstamped receipt for goods, given by a wnathinger of cal-rier, will be evidence in an action against him for the loss of the reckoned to be goods, if the price of the wharfage or carriage be under twenty under £20. pounds, although the value of the goods was above twenty pounds. Chadwick v. Sills, 1 Ry. and Moo, 15. Latham v. Rutley, 1

Rv. and Moo. 13.

An agreement to confess judgment for a sum exceeding twenty pounds to secure a sum under that amount and costs, is an agreement under twenty pounds, and not liable to duty. Ames v. Hill. 2 B. and P. 150. And where on a sale at auction, one purchaser buys several lots all under the value of twenty pounds, although the value of the whole exceed twenty pounds, no agreement stamp is requisite, as a distinct contract arises on

Emmerson v. Heelis, 2 Taunt. 38.

An agreement executed at sea need not be stamped. Ximenes As to agreev. Jaques, 1 Esp. 311, Winbled v. Malmberg, ib. 454; but an ment executed agreement executed in a foreign country or in the colonies, if at sea, and in foreign counthe laws of these countries require a stamp, the must be tries. stamped accordingly, Alves v. Hodgson, 2 Esp. 528, Jordaine v. Latchbrook, 7 T. R. 601. Snaith v. Mingay, 1 Mau. and S. 27; but unless the law of the country to the contrary be distinctly proved, it will be presumed that no stamp is necessary. Clegg v. Levy, 3 Camp. 166. But if it be signed here, it must be stamped with a stamp of this country, although it be dated and drawn up abroad. Abraham v. Dubois, 4 Camp. 269.

It has been seen, that if the agreement is to be proved by Astostamping letters between the parties, it is sufficient to stamp any of the letters. letters with a duty of one pound fifteen shillings. And this will be the same, although there be a request and a compliance therewith, and a collateral agreement contained or indorsed on the same letter. As where A wrote to B requesting him to accept bills, and remit to A or C the proceeds of certain goods, to meet the acceptances to which B agreed by a memorandum signed by him at the foot of the letter, and C, by a memorandum indorsed on the letter, guaranteed the payment to A of all sums which might come to his hands in pursuance of such letter, one stamp was held to be sufficient. Stead v. Liddard, 1 Bing, 196, 8 J. B. Moo, 2, S. C.

But a letter from one party to another, directing the payment of money to a third person, does not require an agreementstamp, Firbank v. Bell, 1 B. and A. 36, Butts v. Swann, 2 Brod. and Bing. 78. 4 J. B. Moo. 484. S. C. And a letter promising to accept a bill of exchange is merely an acceptance and need not be stamped. Crutchley v. Mann, 1 Marsh 29, 5 Taunt. 529.

AFFECTING AGREEMENTS.

STAMPS APPECTING ACREEMENTS.

Miscellaneous points. Memorandum on deposit of deads. Verbal agreement to hold. Agreement to pay when held not to be a promissory note.

The following miscellaneous points are to be noticed. A written memorandum given on a deposit of deeds or the registry of a ship, as a security, requires an agreement stamp. Bowen v. Fox, 2 Man. and Ry. 167.

Where a tenant verbally agrees to hold upon the same terms as a former tenant, and the former lease is improperly stamped. it cannot be received as evidence of the terms of the agreement. Turner v. Power, 1 Moo. and Mal. 131. 7 B. and C. 625. S. C.

Where A promised in writing to pay to B "the sum of £65 with lawful interest three months after date, and also all other sums which may be due to him." it was held that this could not operate as a promissory note even to the extent of £65, but, as it contained an undertaking to pay interest, required an agreement-stamp. Smith v. Nightingale, 2 Stark. 375. also, an agreement for the immediate purchase of a cart, and also a promise to pay for it on a future day, is an agreement, and not a promissory note. Ellis v. Ellis, Gow, 216. So also, a paper, given by a person in whose custody a box had been placed, after reciting that the box had been robbed, "promised to pay the sum of £80 by £10 a month," is not a promissory note. Carter v. Bond. 4 Esp. 253. And a mere acknowledgment from one party to another, called an IOU, need not be stamped. Israel v. Israel, 1 Camp. 499. And see Orford v. Cole. 2 Stark. 351.

Defeazance.

A defeazance upon a warrant of attorney is part of the warrant of attorney, and is not liable to any additional stamp as an Cawthorne v. Holben, 1 N. R. 279.

Cognovit.

Although a cognovit as such does not require any stamp, if it contain words to the effect that the debt shall be received by instalments, it operates as an agreement, and must have an agreement-stamp. Ames v. Hill, 2 B. and P. 150. Reardon v. Swaby, 4 East, 188.

Agreement for leases.

As to the proper stamp on agreements for leases see ante 40, and the rule there laid down is also confirmed by the cases of Phillips v. Hartley, 3 Car. and Pay. 121, and Wright v. Trezevant, 3 Car. and Pay 441, 1 Moo. and Mal. 231, S.C.

Agreement. evidence of part of contract.

Although the agreement be evidence of only a part of a contract, it must be stamped. Ramsbottom v. Mortley, 2 Mau. and

Second exis within.

The exemptions before mentioned may now be considered.

Third exemption, what is within.

It would seem that an agreement for a lease of premises, emption, what though under £5 per annum, would not come under the second exemption, if the interest contracted for be not a lease at a rackrent, but a beneficial lease as a building lease. See Doe d. Hunter v. Boulcot, 2 Esp. 595. And that an agreement for the assignment of an apprentice from one master to another is not within the third exemption. See Rex v. St. Paul's Bedford, 6 T. R. 452.

If an agreement for the sale of goods is made by deed, it does not come within the fourth exemption. Clayton v. Burtenshaw. 5 B. and C. 41. But this exemption has received a liberal con-Thus a warranty of the soundness on the sale of a horse, is within the exemption. Brown v. Frye, 2 Camp. 407, n. Skrine v. Elmore, 2 Camp. 407. And thus also an agreement that A will sell a ship to B, that part of the price shall be secured by a mortgage of the ship, and that the gains of the voyage shall be paid to B, requires no stamp, being an agreement for and relating to the sale of goods. Meering v. Duke, 2 Man. and Ry. 121. So also an agreement by a broker, for a half per cent. to indemnify his principal from any loss on the resale of goods purchased by the broker, need not be stamped, as it comes within this exemption. Curry v. Edensor, 3 T. R. 524.

So also a guarantee for the payment of goods to be sold to third persons, requires no stamp. Warrington v. Furbor, 6 Esp. 89; 8 East, 242. S. C. Watkins v. Vince, 2 Stark. 368. So also an agreement between two persons to share equally in the profit and loss of goods, purchased by one of them, on their joint account, is within the exemption. Venning v. Leckie, 13 East, 7. However, an agreement between merchants for one to take a share in an adventure of a voyage from London to Newfoundland, and from thence with a cargo of fish to Leghorn, is liable to a stamp duty, Leigh v. Banner, 1 Esp. 403, a decision which it is difficult to reconcile with the lastly cited cases.

But the agreement to come within the exemption must relate primarily to the sale of goods, Smith v. Cator, 2 B & A. 778. But if this be the case, the agreements, including other matters, will not make it liable to stamp-duty, as has been seen by the preceding cases, and see also Heron v. Grainger, 5 Esp. 269. Thus also an agreement for the sale of goods does not require an agreement-stamp, although it also contain an agreement to cancel a former agreement for the sale of goods, Whitworth v. Crokett, 2 Stark. 431.

Whether an agreement for the making of goods not in esse As to agreecomes within this exemption, remains in some doubt. Where ments for the A agreed to make and put up certain machines in a house, this making of was held not to be a contract for the sale of goods, but for work and labour to be done, and therefore not within the exemption, Buxton v. Bedall, 3 East, 303; see also Forsyth v. Jervis, 1 Stark. 437. But where there was an agreement for the sale of a quantity of oil, the oil at that time not being made, and the raw materials only being in the possession of the vendor, this agreement was held to be within the exemption, and not liable to stamp duty, Wilks v. Atkinson, 1 Marsh. 412. 6 Taunt. 11. So also where a tradesman agreed to finish certain goods in a tradesmanlike manner, this was held to be an agreement for the sale of goods, and not for the doing of work, and therefore not to require any stamp, Hughes v. Breeds, 2 Car. & Pay.

Fourth ex-

Stamps Appecting Agreements.

As to agreements for the sale of goods not in existence. Sixth exemption, what is within. 159. See also Warrington v. Furbor, ubi sup.; Curry v. Edensor, ubi sup.; and Watkins v. Vince, ubi sup.

Whether an agreement for the sale of goods not in existence at the time of the agreement is within this exemption, is still a subject of doubt. See Waddington v. Bristow, 2 Bos. & Pul. 455. Roydell v. Drummond 11 Fast 142

A letter written by a son who assisted his

A letter written by a son who assisted his mother in carrying on a trade, although he had no share in it, addressed to a creditor of his mother relative to the business, is within the sixth exemption, although it does not appear by the letter that the son acted as agent for his mother, *Mackenzie* v. *Banks*, 5 T. R. 176.

Alteration.

If an agreement be materially altered after it has been signed by the parties, the alteration will be held to be a new agreement, and requires a separate stamp, *Hammond* v. Foster, 5 T. R. 635; Bathe v. Taylor, 15 East, 412.

LII a.

# LII a.

#### ENTIRE FORM.

#### ENTIRE FORM.

Commencement. ARTICLES (a) OF AGREEMENT made and entered into the day of between AB of &c. for himself his heirs executors and administrators of the one part and CD of &c. for himself his heirs executors and administrators of the other part.

Contract for

Testatum
whereby AB
agrees to convey to CD a
fee.

Whereas the said CD hath lately contracted with the said AB for the absolute purchase of the hereditaments and premises hereinafter mentioned free from incumbrances at or for the price or sum of pounds Now THESE PRESENTS WITNESS that in consideration of the sum of pounds of lawful money of Great Britain and Ireland to be paid to the said AB at the time and in the manner hereinafter mentioned he the said AB doth hereby for himself his heirs executors and administrators cove-

Entire form.

<sup>(</sup>a) It has been thought that it might be useful to insert one entire form, and for this purpose, a very simple one has been selected.

nant and agree with the said CD his heirs and assigns that he the said AB or his heirs together with all other necessary parties will on or before the day of next by such conveyances and assurances in the law as the said CD his heirs and assigns or his or their counsel shall require well and effectually convey and assure unto the said C D his heirs and assigns or to such person as he or they shall direct ALL THAT messuage or dwell- Premises. ing-house with the coach-house stable out-house garden and orchard thereto belonging situate in the parish of in the and called county of And all that meadow or field containing by computation acres or thereabouts thereto adjoining and the appurtenances And the said CD in consider- Agreement by CD to pay ation of the covenant hereinbefore contained on the part of the purchase mosaid AB doth hereby for himself his heirs executors and administrators covenant and agree with the said AB his heirs executors and administrators that he the said CD his heirs executors or administrators on the said day of next on having a good and effectual conveyance executed to him or them as aforesaid will pay unto the said A B his executors administrators or assigns the pounds being the full consideration-money agreed to be given by the said CD for the purchase of the said hereditaments and premises And that he the said AB will within one That AB will month from the date hereof at his own costs and charges make deliver abstract. and deliver to the said CD or his solicitor a full and complete abstract of the title of the said AB to the said messuage and premises and will also deduce a clear title thereto And it is Expenses of hereby further agreed by and between the said AB and CD that of assignment the conveyance of the said messuage and premises and the assign- of terms not having been ments of such terms as have been already assigned to attend the assigned shall inheritance and also all copies of wills and acts of parliament shall purchaser, be prepared by and at the expense of the said CD and that such conveyance shall be settled and approved of on the parts of the said AB and CD by their respective counsels or solicitors And Expenses of it is hereby agreed between the parties hereto that any fine recovery covenant for the production of title deeds release assign- by vendor. ment or surrender of any incumbrances and of outstanding terms not already assigned to attend the inheritance and which shall be requisite or necessary to perfect the title to the said messuage

TII a ENTER SUDM

&c. to be borne

LII a. ENTIRE FORM.

All rates to be paid by vendor up to the day of

Diminution or increase in value of premises not to affect agreement. Each party binds himself to the performance of the agreement in the sum of pounds.

and premises shall be respectively levied suffered and prepared by and at the costs and charges of the said AB And that all rents rates taxes and outgoings pavable for or in respect of the said messuage and premises shall be paid and discharged to the by the said AB his executors or administrators And it is hereby further agreed that any diminution or increase in value of the said messuage and premises which may happen or occur before the completion of the said purchase shall not in any manner annul or affect this agreement And for the due performance of the said agreement each and every of the said parties hereto bindeth himself to the other his executors administrators and assigns in the sum of pounds of lawful money of Great Britain and Ireland to be recovered against the defaulter by way of liquidated damages for the non-performance of the said agreement and not by way of penalty WHEREOF the parties hereto have set their hands on the day and year first above written.

A B

CD

TIII. COMMENCE-MPNTS

# BONDS.

#### COMMENCEMENTS.

### LIII

(1) KNOW ALL MEN by these presents that I (obligor) of Commenceam held and firmly bound to (obligee) (a) of in the from one to pounds (double the money to be secured) of lawful sum of money of Great Britain and Ireland to be paid to the said (obligee) (b) his executors administrators or assigns For which payment I bind myself my heirs executors and administrators and every of them firmly by these presents Sealed with my seal this in the year of our Lord 18 day of

(2) Know all men by these presents That I (obligor) Commenceof &c. am held and firmly bound to (obligees) of &c. in the ment of bond where the obpounds (double the money to be secured) of lawful ligees are jointmoney of Great Britain and Ireland to be paid to the said (obligees) (c) or to their executors admininistrators or assigns For which &c. (as in 1.)

" of &c. and (other obligee) of &c. jointly and severally."

TWO OBLIGERS.

<sup>(</sup>a) If there are two obligees, say,

<sup>(</sup>b) "And (other obligee) or either of them their or either two oblighes. of their executors administrators or assigns."

<sup>(</sup>c) If the obligees are tenants in common, say, " (obligees) as tenants in common or their or either of their ex- common. ecutors administrators or assigns."

LIII. COMMENCE-MENTS.

Commencement of bond where there are two obligors or obligor or surety.

(3) Know all men by these presents that we (obligors) (a) of &c. are held and firmly bound to (obligee) in the sum of pounds (double the sum to be secured) of lawful money of Great Britain and Ireland to be paid to the said (obligee) or to his executors administrators or assigns For which payment to be well and faithfully made We bind ourselves and each of us our and each of our heirs executors and administrators and every of them jointly and severally firmly by these presents Sealed with our seals, (as in 1.)

Commencement of bond where there are three or more obligors.

(4) Know all men by these presents That we A B of &c. CD of &c. and EF of &c. are held and firmly bound to YY of &c. in the sum of pounds (double the money to be secured) of lawful money of Great Britain and Ireland to be paid to the said YY or to his executors administrators or assigns For which payment to be well and faithfully made we bind ourselves and every of us and any two of us our and every of our and any two (b) of our heirs executors and administrators and every of them jointly and severally firmly by these presents Sealed with our seals on &c. (as in 1.)

Limited responsibility.

(a) The surety or sureties may limit his responsibility to a certain sum. If this is intended, say, " we (sureties) of &c. but to the extent only of pounds are held." &c.

Where there are more than two obligors.

(b) Where there are more than two obligors, words giving a power to sue any two or three &c. of them, should always be introduced, as if three are jointly and severally bound, the obligee cannot sue two of them only during the life of the third, but must either sue them all, or each of them severally, unless words of this kind are introduced. Streatfield v. Hulliday, 3 T. R. 782.

LIV. DEFECTIVE TITLE

# LIV.

(Recite contract for purchase of lands as in Vol. I. p. 101, Recitals. and then the particular defect in the title, as to which, see ante Then recite conveyance to the purchaser, for which see Vol. I. B.) And whereas to indemnify the said C D and E F Agreement to and their respective heirs and assigns against the possible invalidity of the title to the said premises by reason of such defect as aforesaid it hath been agreed that the said (obligor) should execute and give to the said (obligee) a bond in the abovementioned sum of pounds with a condition for making the same void as hereunder written Now therefore the condition Condition that if lands shall of the above-written bond or obligation is That if the heredita- be quietly enments and premises contracted to be sold and since conveyed by obligee. the said (obligor) to the said (obligee) his heirs and assigns as hereinbefore is recited and every part thereof shall from time to time and at all times hereafter be peaceably and quietly held and enjoyed by the said (obligee) his heirs and assigns And if the said (obligee) his heirs and assigns shall receive and take the rents issues and profits of the said hereditaments and premises and every part thereof to and for his and their own use and benefit free from any legal or equitable actions suits rights titles troubles evictions interruptions claims or demands whatsoever of or by any person or persons having or hereafter to have or claim on account or by reason of the said defect Then the above- Then the bond written bond or obligation to be void but otherwise to remain in to be void. full force.

SEALED AND DELIVERED being first duly stamped in presence of

LV. DEFECTIVE

# LV.

Recitals.

Right to

Agreement for bond.

Condition that if premises shall be held free from any claim of dower

(Recite contract for purchase, see Vol. I. 101, and conveyance of the premises to purchaser, B. 25.) And whereas (wife) the wife of the said (vendor) hath a right or title to dower in a part of the said hereditaments and premises but the premises subject thereto being of small value the said (purchaser) hath agreed to dispense with the levving of a fine of the said hereditaments and premises on the said (obligor) entering into the above-written bond or obligation subject to such condition for making the same void as hereinafter is mentioned Now the condition of the above-written obligation is such that if the said hereditaments and premises contracted to be sold and since conveyed by the said (obliger) to the said (obliger) his heirs and assigns as hereinbefore is recited and every part thereof shall from time to time and at all times hereafter be peaceably and quietly held and enjoyed by the said (obligee) his heirs and And if the said (obligee) his heirs and assigns shall receive and take the rents issues and profits of the said hereditaments and premises and every part thereof to and for his and their own use and benefit free from all estates rights and titles of or to dower at the common law or by custom or otherwise howsoever to which she the said (wife) now is or at any time hereafter may be entitled in to or out of the said hereditaments and premises or any part thereof and free from any legal or equitable actions suits rights titles troubles evictions interruptions claims or demands whatsoever of or by any person or persons having or hereafter to have or claim on account or by reason of such right or title of dower Then the above-written bond or obligation shall be void and of no effect.

bond to be void.

LVI. WHERE VEN-DOD MAY DE BANKRUPT.

# LVI

(Recite that by indentures of lease and release the release of Recitals. even date with the above bond and made &c. certain freehold hereditaments therein mentioned situate at have in consideration of pounds by the said (obligees) to the said (principal) paid as in the said indenture of release is mentioned been conveyed to the said (obligees) for securing to them pounds with interest the repayment of the same sum of at the times therein expressed, see Vol. I. B. 37.) And whereas Agreement for upon the treaty for the loan of the said sum of pounds (or for the said purchase) it was agreed that the above-bound (obligors) should enter into the above-written bond subject to such condition as is hereinafter contained Now the condition Condition that of the above-written bond or obligation is such that if no commission of bankrupt shall be dated and issued against the said rupt shall (principal) for the space of two calendar months to be computed two months from the day next after the date of the above-written bond or chase or mortobligation or if a commission of bankrupt shall be dated and gage, or if issued against the said (principal) within the space of two shall issue and calendar months to be computed as aforesaid and the said be indemnified (principal) and (surety) or either of them their or either of their account heirs executors or administrators shall and do well and effectually thereof, indemnify and save harmless the said (obligees) and each of them their and each of their heirs executors and administrators and the estates and effects of them and every of them of from and against all losses demands costs and expenses which the said (obligees) or either of them their or either of their heirs executors and administrators shall or may incur sustain pay expend or be put unto by reason or in consequence of the said (obligees) having advanced and lent (or paid) to the said (obligor) the said sum of pounds as in the said indenture of release is mentioned Then and in either of the said cases the abovewritten bond or obligation shall be void and of no effect.

if no commisissue within after such purcommission obligees shall from harm on

then bond to be void.

LVII. WHERE IN-PANTS CONVEY.

# LVII.

(Recite indentures of lease and release whereby certain pre-

That doubts have been entertained as to what interest infants take in part of the premises.

Agreement to enter into the hond.

if the infants when of age shall execute conveyances.

mises were conveyed to (obligee) in fee, see Vol. I. B. 23.) And whereas doubts have been entertained whether AB an infant of the age of vears as eldest son and heir at law of R.B late of &c. deceased hath not some estate or interest in the said hereditaments and premises And also whether C D an infant of the age of vears as heir at law of B D late of &c. deceased hath not also some estate or interest therein And in order to indemnify the said (obligee) his heirs and assigns against the respective claims of the said A B and C D upon the same premises they the said (obligors) did agree to enter into the above-written bond or obligation subject to the condition next Condition that hereinafter contained Now therefore the condition of the abovewritten bond or obligation is such that if the said A B and C D respectively or their respective heirs Do and shall within six calendar months after their respectively attaining the age of twenty-one years at the costs and charges of the said (obligors) or in case of the death of them the said A B and C D or either of them during infancy then if the heirs of them or him so dying shall within six calendar months after such decease at the like costs and charges by such good and sufficient deeds conveyances and assurances as the counsel of the said (obligee) his heirs or assigns shall advise and require well and effectually convey and assure all the estate right title interest claim and demand whatsoever of them the said A B and C D respectively or of their respective heirs of in to and out of the said hereditaments and premises with their appurtenances unto and to the use of the said (obligee) his heirs and assigns for ever And if thereupon such conveyances and assurances shall be delivered to the said (obligee) his heirs and assigns And if until such conveyances and assurances shall be executed and delivered as aforesaid the said (obligee) his heirs and assigns shall be

And until conveyances if the obligee shall peaceably enjoy the premises.

permitted peaceably and quietly to have hold occupy possess and enjoy the said hereditaments and premises with the appurtenances and to receive and take the rents issues and profits thereof for his and their own use and benefit freed and discharged or otherwise by the said (obligors) or some of them or their or some of their heirs executors or administrators well and sufficiently saved kept harmless and indemnified of from and against all and singular estates titles claims and demands whatsoever of the said AB and CD respectively and their respective heirs and assigns or any person or persons claiming or to claim by from through or under or in trust for them or any of them And also of from and against all actions suits claims and demands losses damages costs charges and expenses whatsoever that shall or may at any time be brought commenced or prosecuted paid sustained or borne against or by him the said (obligee) his heirs executors administrators or assigns for or by reason or means or on account of any act transaction matter or thing whatsoever in any wise relating thereto Then and in such case Bond shall be the above-written bond or obligation shall be void and of no effect

LVII. WHERE IN-

LVIII.
WHERE COPYHOLDS ARE
CONVEYED.

# LVIII.

Condition that if obligor was seised in fee at the time of the surrender.

(Recite the surrender to obligee as in Vol. I. B. 60.) the condition (a) of the above-written obligation is that if the said (obligor) for and notwithstanding any act deed matter or thing whatsoever by him the said (obligor) made done omitted committed executed or knowingly or willingly suffered to the contrary was at the time of making and executing the said surrender lawfully rightfully and absolutely seised of and in or well and sufficiently entitled to the said {messuages, &c.} hereby covenanted to be surrendered or intended so to be and every part thereof with their and every of their appurtenances for a good sure perfect absolute and indefeasible estate of inheritance in fee-simple according to the custom of the manor of without any manner of condition trust power of revocation equity of redemption remainder or limitation of any use or uses or other restraint cause matter or thing whatsoever to alter charge defeat incumber revoke or make void the same And that for and notwithstanding any such act deed matter or thing as aforesaid if he the said (obligor) hath now in himself good right full power and lawful and absolute authority to surrender the said {messuages &c.} hereby covenanted to be surrendered or intended so to be with the appurtenances unto and to the use of the said (obligee) his heirs and assigns upon the trusts and in the manner aforesaid according to the true intent and meaning of these presents And that if the said (obligee) his heirs and assigns shall from time to time and at all times hereafter peaceably and quietly enter into hold occupy possess

And had good right to surrender.

And if obligee shall quietly enjoy the premises.

Practical direction.

<sup>(</sup>a) Where copyholds are surrendered and no previous covenant to surrender is made, a bond of this nature is often taken. If, however, it will be permitted by the steward, the covenants should be inserted in the surrender itself.

and enjoy the said {messuages &c.} hereby covenanted to be surrendered or intended so to be with their appurtenances and have receive and take the rents issues and profits thereof and of every part thereof to and for his and their own use and benefit without any lawful let suit trouble denial claim demand interruption or eviction whatsoever of from or by him the said (obligor) or his heirs or of from or by any other person or persons whomsoever lawfully or equitably claiming or to claim by from or under or in trust for him them or any of them And that free and Free from inclear and freely and clearly and absolutely acquitted exonerated and for ever discharged or otherwise by the said (obligor) his heirs executors and administrators well and sufficiently saved defended kept harmless and indemnified of from and against all and all manner of former and other gifts grants bargains sales jointures dowers freebench and all rights and titles of or to dower freebench uses trusts entails wills mortgages leases statutes merchant or of the staple recognizances executions extents rents arrears of rent annuities legacies sums of money yearly payments forfeitures re-entry cause and causes of forfeiture and reentry debts of record debts due to the King's Majesty and of from and against all other estates titles troubles charges debts and incumbrances whatsoever either already had and made executed occasioned and suffered or hereafter to be had made executed occasioned and suffered by the said (obligor) or his heirs or any other person or persons lawfully or equitably claiming or to claim by from or under or in trust for him them or any of them or by his or their acts means defaults or procurements (except only the customary rents fines duties and services payable and to be performed in respect of the same hereditaments and premises to the lord or lady lords or ladies of the said manor) ther that if he the said (obligor) and his heirs and all and every obligor shall further assure. other person or persons having or claiming or who shall or may hereafter have or claim any estate right title interest inheritance use trust property claim or demand whatsoever either at law or in equity of in to or out of the said {messuages &c.} hereby covenanted to be surrendered or intended so to be with their appurtenances or any of them or any part thereof by from or under or in trust for him the said (obligor) or his heirs shall and will

HOLDS ARE CONVEYED.

cumbrances.

And fur- And if the said

LVIII.
WHERE COPYHOLDS ARE
CONVEYED.

from time to time and at all time able request to be made for that and charges of the said (obligee) surrender and execute or cause c rendered and executed all such reasonable acts deeds things su law whatsoever for the further ! lutely surrendering and assurin hereby covenanted to be surrence every part thereof with their app of the said (obligee) his heirs a and according to the true intent as by the said (obligee) his heirs sel in the law shall be reasonabl so as no such further assurance any further or other covenant or son or persons who shall be re same his her or their heirs execudeeds and so as the person or i make such further assurance or compellable for the making ther or their usual place or respective written bond or obligation shall

Bond shall be void.

the husiness of a

## LIX.

Whereas the above bounden (obligor) hath lately carried on

RONDS.

in the town of And whereas the said (obligor) in consideration of the sum of pounds paid to him by the said (obligee) hath assigned to the said (obligee) all his the said (obligor's) interest in the stock and effects of the said business And in consideration of the said sum Agreement to pounds so paid by the said (obligee) to the said (obliger) as aforesaid the said (obligor) hath agreed to enter into the above-written bond or obligation with the condition hereunder writ-Now the condition of the above-written bond or obligation is Condition that such that if the said (obligor) shall and do either alone or in copartnership with any person or persons whomsoever carry on the said trade or business of a or dealer in or any of them within the distance of miles in any direction of the said town of at any time within the space of years to be computed from the day of the date of the above-written bond or obligation or if the said (obligor) either by himself or by any other person whomsoever shall at any time within the space of years solicit the custom of any of his late nor solicit any customers or friends in the said business (or of any of the persons whose names are specified in the schedule hereunder written) or induce them to deal either with himself the said (obligor) or with any other person whomsoever in the said trade or business of or any of them or induce or prevail upon or attempt to induce or prevail upon any his said customers and friends (or of the said persons whose names are mentioned in the said schedule) not to deal or discontinue his her or their dealing with the said (obligee)

LIX. WHERE GOOD-WILL IS AS-SIGNED

That obligor has carried on business at Assignment of business.

enter into

if obligor shall not carry on the trade of a within miles or before years.

Then and in either of the said cases if the said (obligor) his Norinduce his customers not to deal with obligee.

tion or abatement thereout whatsoever the said bond or obligation Bond to be

pounds of lawful

heirs executors or administrators shall and do forthwith well and

truly pay or cause to be paid unto the said (obligee) his executors

money of Great Britain and Ireland without making any deduc-

administrators or assigns the full sum of

shall be void and of no effect. (a)

<sup>(</sup>a) And see an agreement for a similar purpose ante 14, VIII.

LX.
on mortgage.

# LX.

Condition that if obligor shall pay mortgage money and interest.

(See Recitals, Vol. I. Class II. p. 142.) Now the condition of the above-written obligation is such that if the said (obligor) his heirs executors administrators or assigns should well and truly pay or cause to be paid to the said (obligee) his executors administrators or assigns the sum of pounds of lawful money of Great Britain and Ireland and the sum of pounds of like lawful money as and for one year's interest for the same at the rate of five pounds for one hundred pounds by the year making together the sum of pounds on or at the days and times hereinafter mentioned (that is to say) the sum of pounds part thereof (being half a-year's interest for the said sum of pounds at the rate aforesaid) on the next ensuing the date day of of the above written bond or obligation and the sum of pounds the residue thereof (being the whole of the said principal sum of pounds and another half year's interest for the same at the rate aforesaid) on the which will be in the day of year of our Lord without any deduction or abatement whatsoever out of the same or any part thereof Then the abovewritten bond or obligation shall be void and of no effect otherwise the same shall remain in full force and virtue.

bond shall be void.

LX a. ON MORTGAGE.

# LX a.

Whereas the above bounden (obligor) being seised of or well Recital of entitled to a {messuage or tenement} hereditaments and premises situate at &c. and the inheritance thereof in fee simple obligor to according to the custom of the manor of hath this day in to secure the pounds of lawful money of sum of consideration of the sum of Great Britain and Ireland to him paid by the above-mentioned interest. (obligee) surrendered into the hands of the lord of the said manor by the acceptance of (steward) of &c. the steward of the said manor the said {messuage or tenement} hereditaments and premises To the use of the said (obligee) his heirs and assigns for ever at the will of the lord according to the custom of the said manor at and under the rents suits and services therefore due and of right accustomed subject nevertheless to a proviso or consideration for the redemption of the said copyhold premises and the making void of the said surrender if the said (obligor) his heirs executors or administrators should faithfully pay or cause to be paid unto the said (obligee) his executors administrators pounds and interest thereon after and assigns the sum of the rate of five pounds for one hundred pounds by the year on the now next ensuing and also all heriots fines fees and customary dues and payments whatsoever (not exceeding in the whole together with the said sum of hereinbefore mentioned the sum of pounds) which the said (obligee) his heirs or assigns shall or may pay or become liable to pay in respect of the said {messuage or tenement} hereditaments and premises or any part thereof at the time of his admission thereto or previously or subsequently to such admission with interest on the sum or sums of money so paid at the rate aforesaid without making any deduction out of the several said payments

obligee in fee.

LX a.
ON MORTGAGE.

Condition that if obligor shall pay the sum of pounds, and interest, and all fines, &c. to obligee. on any account whatsoever Now the condition of the above-written bond or obligation is such that if the said (obligor) his heirs executors or administrators do and shall pay or cause to be paid unto the said (obligee) his executors administrators or assigns the sum of pounds and interest and all sums of money for heriots fines and fees and customary dues and payments whatsoever (not exceeding in the whole the said sum of

pounds) which he the said (obligee) his executors admi-

nistrators or assigns shall pay or become liable to pay in respect of the said {messuage or tenement} hereditaments and premises at the time of his admission thereto or previously or subsequently to such admission with interest for the same after the rate aforesaid according to the true intent and meaning of the proviso or agreement for redemption of the said premises contained in the said surrender And also if he the said (obligor) was at the time of making the said surrender lawfully and rightfully seised to him and his heirs of the said {messuage or tenement} hereditaments and premises to his and their own use for an absolute estate of inheritance therein at the will of the lord according to the custom of the said manor And also if he then had good right full power and lawful and absolute authority to surrender the same to the use of the said (oblique) his heirs and assigns in manner and form and according to the tenor and effect of the said surrender And also that if default shall be made in payment of the said sum of pounds or the interest thereof or any part thereof respectively contrary to the aforesaid proviso or condition for the payment of the same Then if the said (obligee) may from time to time enter into and upon the said {messuage or tenement} and premises and peaceably and quietly have hold occupy and enjoy the same and receive and take the rents issues and profits thereof to and for his and their own use without any lawful let suit trouble interruption or disturbance of from or by the said (obligor) his heirs or assigns or any person or persons whomsoever having or lawfully or equitably claiming or who shall or may have or lawfully or equitably claim any estate right title or interest in to out of or upon the said {messuage &c.} or any part thereof And that free and clear and freely discharged from all estates liens charges and incumbrances whatsoever (save

and if he was seised in fee,

and had good right to surrender,

and if default shall be made, obligee may enter and peaceably hold the premises

free from incumbrances.

and except the rents suits and services payable and to be performed in respect of the {messuage &c.} hereditaments and premises due and of right accustomed according to the custom of the said manor) And moreover if he the said (obligor) and his and shall furheirs and all persons claiming or to claim any estate charge or the premises. interest in to or out of the said {messuage &c.} hereditaments and premises do and shall at the request of the said (obligee) his executors administrators and assigns but at the costs and charges of the said (obligor) his executors administrators or assigns make do and execute or cause to be made done and executed all such further and other surrenders and assurances for the more effectually conveying and assuring the said {messuage &c.} hereditaments and premises with the appurtenances to the use of the said (obligee) his heirs and assigns according to the true intent and meaning of the said surrender as he the said (obligee) his heirs executors administrators or assigns or his or their counsel in the law shall reasonably advise and require Then the above-written bond to be bond or obligation to be void and of no effect.

ON MORTGAGE.

woid.

LXI.
on annuffy.

#### LXI.

Recitals.

Agreement to enter into bond.

Condition that if obligor shall duly pay annuity,

(1) (Recite contract for purchase of annuity Vol. I. p. 188.) And whereas upon the treaty for the purchase of the said annuity the said (obligee) did agree to enter into the above-written bond or obligation as a further security to the said (obligee) for payment of the said annuity (recital as to the expenses See Vol. I. p. 189.) (6) and that surety should join as post 128. 1.) Now the condition of the above-written obligation is such that if the said (obligors) or either of them or their or either of their heirs executors or administrators Do and shall well and truly pay or cause to be paid to the said (obligee) his executors administrators or assigns during the life of the said (obligor) [or (obligee)] at or in the common dining-hall of Lincoln's Inn in the county of Middlesex between the hours of twelve at noon and two in the afternoon one annuity or yearly sum of pounds of lawful money of Great Britain and Ireland by two equal half yearly [or quarterly] payments on the day of **fthe** day of day of the day of ] and the

the day of ] and the day of in every year without any deduction or abatement whatsoever out of the same or any part thereof for or upon account of any present or future taxes charges or impositions And also do and shall make the first [half yearly] payment thereof on the day of next ensuing the date of the above-written bond or obligation And also do and shall if the said (obligee) shall depart this life on any other day than one of the said [half yearly] days of payment well and truly pay or cause to be paid at or in the said common dining-hall between the hours aforesaid to the said (obligee) his executors administrators or assigns on demand a proportional part of the said annuity or yearly sum of pounds for the time which shall have elapsed between the then last half

and proportional part thereof. yearly day of payment thereof and the day of the decease of the said (obligor) or (obligee) (and which said annual sum is the same annual sum as is also secured or intended to be secured by an indenture bearing date &c. and made &c.)

LXI.
ON ANNUFTY.

(2) Or if the said (obligor) his heirs executors or administrators having duly and punctually made all payments which shall for the time being have previously become due in respect of the said annuity or yearly sum in manner aforesaid do and shall on the expiration of [three] calendar months' notice in writing to be at any time hereafter given for that purpose by the said (obligor) his heirs executors or administrators to the said (obligoe) his heirs executors or administrators pay and tender or cause to be paid and tendered to the said (obligoe) his heirs executors administrators or assigns the sum of pounds of lawful money of Great Britain and Ireland together with all and every sums and sum of money which shall be then due for or on account of the said proportional arrears of the said annuity or yearly sum up to the day of purchasing the same

Or if obligor shall after three months notice tender the sum of pounds, and all arrears, to obligee.

(3) Then the above-written bond or obligation shall be void or otherwise the same shall remain in full force and virtue.

Then bond to

LXII. ON MARRIAGE.

### LXII.

That marriage is about to be solemnized.

And that obligor has agreed to make a settlementon instended wife and issue of marriage.

if wife or issue shall be living at the death of obligor, his executors shall pay obligees the sum of pounds to be applied by them upon the trusts of a

marriage settlement.

Whereas a marriage hath been agreed upon and is intended shortly to be had and solemnized between (obligor) and Mary B of &c. spinster youngest daughter of RB. late of &c. aforesaid esq. deceased And the said (obligor) proposed and agreed upon the treaty for the said intended marriage that for making some provision in addition to what is made by an indenture of settlement of even date herewith for the said Mary B. and for the issue of the said intended marriage if any such there shall be the heirs executors or administrators of him the said (obligor) shall within six months after his decease pay the sum of pounds of lawful money of Great Britain and Ireland unto the above-named (obligees) [trustees] or the survivors or survivor of them his executors or administrators in manner hereinafter Condition that mentioned Now the condition of the above-written obligation is such that in case the said intended marriage shall take effect and the said Mary B. his intended wife or any issue of the said intended marriage shall be living at his decease if the heirs executors or administrators of the said (obligor) shall well and truly pay or cause to be paid unto the said (obligees) or the survivors or survivor of them his executors or administrators the pounds of lawful money of Great Britain and Ireland within six calendar months next after the decease of him the said (obligor) with interest for the same after the rate of five pounds for one hundred pounds from the time of his decease to be by them the said (obligees) or the survivors or survivor of them his executors or administrators laid out and invested or paid applied and disposed of in such manner and upon such trusts and to and for such ends intents and purposes and subject to such powers provisions and agreements as are mentioned and contained in and by a certain indenture of settlement bearing even date with the above-written obligation and made or expressed to be made between the said (obligor) of the first part the said Mary B. of the second part and the said (obligees) of the third part Then the above-written obligation to be void and of no effect But if default shall be made in the premises then to be and remain in full force.

LXII a. ON MARRIAGE.

# LXII a.

Whereas a marriage hath been agreed upon and is intended That marriage to be shortly had and solemnized between AB of &c. and the hon. agreed upon. A P one of the daughters of the right hon. Charles Lord L by A his late wife And whereas upon the treaty for the said intended That obligor marriage the said Charles Lord L agreed to secure the sum of to secure the

pounds to be paid to the said (trustees) at the time and upon the trusts hereinafter expressed or declared of and concern- tees upon trust ing the same Now the condition of the above-written bond or clared. obligation is that if the said intended marriage shall not take if marriage effect or if the said intended marriage shall take effect and shall not take the heirs executors or administrators of the said Charles riage shall Lord L shall within the space of six calendar months next after and the sum the decease of the said Charles Lord L well and truly pay or of pound shall be paid cause to be paid to the said (trustees) the sum of pounds of to obligees. lawful money of Great Britain and Ireland with interest for the same after the rate of five pounds for one hundred by the year to be computed from the decease of the said Charles Lord L without making any deduction or abatement whatsoever out of the same or any part thereof for present or future taxes or any other matter cause or thing whatsoever Then and in either of the said Then bond to cases the above-written bond or obligation shall be absolutely null and void And it is hereby agreed and declared that the said Declaration (trustees) their executors administrators and assigns shall stand that obligees and be possessed of and interested in the said sum of and the interest thereof upon and for the trusts intents and purposes sum upon trusts of marand with under and subject to the powers provisions agreements riage settleand declarations which shall be expressed and declared of and concerning the same by and in a certain indenture already prepared and engrossed and bearing or intended to bear even date with the above written-bond or obligation and made or expressed to be made between &c. (mention the parties to the marriage settlement.)

has agreed sum of pounds to trushereinafter de-Condition that effect, or martake effect. pounds

shall stand pounds possessed of sum upon

LXIII.
FOR THE
PAYMENT OF
MONEY.

#### LXIII.

That sureties have agreed to join.

(1) Whereas the above-bounden (surety or sureties) hath (or have) agreed to join with the above-bounden (principal) in the above-written bond or obligation subject to the condition hereunder written as a surety (or sureties) for the said (principal) his heirs executors and administrators.

Condition that if obligor shall pay the sum of pounds.

(2) Now the condition of the above-written bond or obligation is such That if the above-bounden (obligor) (a) his heirs executors or administrators shall upon the day of [or after the expiration of years] truly pay or cause to be paid unto the said (obligee) (b) his executors administrators or assigns the full sum (c) of pounds of lawful money of Great Britain and Ireland with interest for the same after the rate of five pounds for one hundred pounds by the year without any deduction or abatement whatsoever Then the above-written bond or obligation shall be void and of no effect or otherwise shall remain in full force and virtue.

Bond to be void.

Two or more obligors.

(a) If there be two or more obligors, say, "the above-bounden (obligor) and (other obligor) or [any or] either of them their [or any] or either of their heirs" &c.

Two or more obligees.

(b) If there be two or more obligees, say, "(obligees) their executors administrators or assigns the full sum" &c.

DISTALMENTS.

(c) If the money is to be paid by instalments omit the reference to the time of payment, and here insert, "in manner and at the times following (that is to say) the sum day of pounds on the now next ensuing the sum of pounds on the day of then next following and the sum day of of pounds on the in the year 18 with interest after the rate of five pounds for one hundred pounds by the year for the said sum of pounds or for so

LXIII a. FOR THE DAVMENT OF MONRY

# LXIII a.

Now the condition of the above-written bond or obligation is Condition for such that if the above-bounden (obligor) his heirs executors or securing the administrators do and shall after the expiration of to be computed from the date of the above bond or obligation instalments. well and truly pay or cause to be paid unto the above-named (obligee) his executors administrators or assigns the sum of pounds of lawful money of Great Britain and Ireland in the parts shares and proportions and at the times hereinafter mentioned (that is to say) If the said (obligee) his executors administrators or assigns shall within calendar months previous to the expiration of the said term of vears from the date of the above bond or obligation by some writing under his or

pounds by half yearly

much thereof as shall for the time being remain due the first payment of such interest to commence at the expiration of six calendar months from the date of these presents the said several payments to be made without any deduction" &c. as above.

Or if the money is to be made payable on notice from the PAYABLE ON obligee, omit the reference to the time of payment, and say, "whatsoever at the expiration of calendar months from the time when the said (obligee) his executors administrators or assigns shall give notice in writing to the said (obligor) his heirs executors or administrators to pay the same Then"

Where the payment of the principal is to be postponed for a Breach of payconsiderable time, a clause is often introduced, providing that if ment of inthe interest shall not be punctually paid, the principal may be sued for immediately. But this clause is unnecessary, as it has been lately decided that on the omission of the payment of interest, the whole of the money secured may be sued for, although no such clause be inserted. Van Sandau v. ----, 1 B. & A. 214.

LXIII a.

POR THE
PAYMENT OF

their hand or hands give notice to the said (obligor) his heirs executors or administrators to pay off the said sum of then and in that case if the said (obligor) his heirs executors or administrators do and shall well and truly pay or cause to be paid to the said (obligee) his heirs executors or administrators pounds the first instalment on the said sum the sum of pounds immediately after the expiration of the said Λf vears And the like sum of pounds pounds at the in further discharge of the said sum of calendar months after the expiration expiration of every years until the whole of said sum of of said term of pounds shall be paid off and discharged Or if the said (obligee) his executors administrators or assigns shall neglect to give such notice as aforesaid previous to the expiration of years then and in that case if the said (obligor) his heirs executors and administrators do and shall well and truly pay or cause to be paid to the said (obligee) his executors administrators or assigns the sum of pounds the first instalment of the said sum of pounds at the expiration of months from the time when the said (obligee) his executors administrators or assigns shall give notice in writing to the said (obligor) his heirs executors or administrators to pay off the said sum of pounds And also do and shall well and truly pay or cause to be paid to the said (obligee) his executors administrators or assigns the like sum of pounds at the expiration of every calendar months from the time lastly hereinbefore mentioned and appointed for the payment of the first instalment until the whole of the said sum of shall be discharged And also if the said (obligor) his heirs executors and administrators do and shall in the mean time and until the whole of said sum of pounds shall be paid off and discharged by two equal half yearly payments in every year or within twenty-one days after every half yearly day of payment well and truly pay or cause to be paid unto the said (obligee) his executors administrators or assigns interest for the said sum of pounds or for so much thereof as shall for the time being remain due after the rate of five pounds for the one hundred

And interest for the same. (the first half yearly payment of such interest to commence at the expiration of six calendar months from the date of the said bond or obligation) Then the said bond or obligation shall be void and of no effect otherwise the same shall remain in full force and virtue

LXIII a. POR THE DAVMENT OF MONEY.

## LXIII b.

LXIII b.

Whereas (a) on the execution of the within-written bond it Agreement to was agreed that the within-named (obligor) as a consideration pounds therein mentioned for advancing the said sum of should not only secure the payment thereof by the execution of the within-written bond but should also charge all his real estate with the payment thereof in the manner hereinafter men-Now these PRESENTS WITNESS that the said Testatum (obligor) in pursuance of his said agreement doth hereby absolutely subject and charge all the real estates of him the said (obligor) with the payment of the sum of pounds and bond on his with interest for the same after the rate of pounds for the one hundred pounds to commence from the date of these presents.

whereby obligor charges mentioned in

<sup>(</sup>a) This should be indorsed on the bond, and may be used Indorsement either when the bond is a common money-bond, or a bond for the on bond. replacing of stock.

LXIV. FOR TRANSFER OF STOCK.

#### LXIV.

Condition that if obligor shall transfer stock to trustees within twelve months;

Now the condition of the above-written bond or obligation is That if the said (obligor) his heirs executors or administrators shall on the transfer day for the stock called three per cent. consolidated bank annuities next immediately preceding the expiration of twelve calendar months to be computed from the date of these presents transfer or cause to be transferred the sum of pounds three per cent. consolidated bank annuities into the names of the said (obligees) or the survivor of them or the executors administrators or assigns of such survivor in the books of the Bank of England or of such person or persons as they or he shall by any writing under their or his hand direct or appoint And if the said (obligor) his heirs executors or administrators shall in the mean time and until the said sum of pounds three per cent. consolidated bank annuities shall be so transferred as aforesaid well and truly pay or cause to be paid to the said (obligees) or the survivor of them or the executors administrators or assigns of such survivor in lieu of the dividends or annual produce of the said sum of

And pay interest till the same is transferred;

pounds three per cent. consolidated bank annuities such sum or sums of money as the said (obligees) or the survivor of them and the executors administrators or assigns of such survivor would have been entitled to receive as and for the dividends and annual produce of the said sum of pounds three per cent. consolidated bank annuities in case the same had continued standing in the names and as the property of the said (obligees) for their proper use and benefit at such time or times in such shares and proportions and in such manner as the same dividends or annual produce would have been payable Then and in such case the above-written bond or obligation shall be absolutely null and void.

bond to he void.

IVV

FOR SECURITY OF BANKERS

## LXV.

Whereas the above-bounden (obligors) now carry on the busi- That obligors ness of | bankers | at the town of in the county of And whereas they country. under the name or style of and Co. have agreed to open an account with the above-named (obligees) Now the condition of the above-written obligation is Condition that that if the said (obligors) or any of them their or any of their shall settle all heirs executors or administrators shall at the end of every accounts with obligees. month ensuing the date of the above-written bond or obligation make up and adjust all accounts with the said (obligees)(a) their executors administrators and assigns And upon adjusting and settling such accounts do and shall well and truly pay or cause to be paid to the said (obligees) (a) their And shall pay executors administrators and assigns the balance if any which balance found shall be then due upon the said accounts to the said (obligees) their executors administrators and assigns with interest after the rate of five pounds for one hundred pounds by the year on the sum or sums of money forming such balance from the time respectively occasioning or increasing the said balance Or if the said balance shall not be paid immediately upon the expiration of the said current month then if the said (obligors) or any of them their or any of their heirs executors or administrators do and shall within or upon the expiration of one calendar month

carry on the business of in the

due thereupon.

That such words, if according to the intention of the parties, are necessary, see Bodenham v. Purchas, 2 B. and A. 39.

<sup>(</sup>a) If the condition is intended to extend to the survivor of New partners. the obligees, and to any new partners who may be introduced into the firm, say,

<sup>&</sup>quot;or the survivors or survivor of them and other the persons or person who shall or may become partners or partner with them or any or either of them in the said business or any of them their &c."

LXV. FOR SECURITY OF BANKERS.

134

And shall indemnify obligees from all demands.

next after demand well and truly pay or cause to be paid unto the said (obligees) (a) their executors administrators or assigns all such sum or sums of money as shall appear due to them upon any such balance as aforesaid with interest for the same after the rate and to be computed as aforesaid And also that if the said (obligors) or any of them their or any of their heirs executors and administrators do and shall from time to time and at all times hereafter indemnify and keep harmless the said(a) (obliques) and each and every of them their and each and every of their heirs executors administrators and assigns and their and each and every of their estates and effects whatsoever and wheresoever of from and against all sums of money costs charges damages expenses actions suits claims and demands whatsoever for upon account or by reason of any sum or sums of money to be by him or them paid or advanced on account of the said (obligors) or any of them their or any of their heirs executors administrators or assigns or for or by reason of any transaction action suit matter or thing whatsoever depending between the said (obligors) or any of them their or any of their heirs executors administrators or assigns and the said (obliques) (a) or any of them their or any of their heirs executors administrators or assigns relating to the premises or any other matter cause or thing whatsoever Then and in such case the said bond or obligation shall be void.

New partners.

<sup>(</sup>a) If the condition is intended to extend to the survivor of the obligees, and to any new partners who may be introduced into the firm, say,

<sup>&</sup>quot;or the survivors or survivor of them and other the persons or person who shall or may become partners or partner with them or any or either of them in the said business or any of them &c."

LXVI. FOR SECURITY OF BANKERS.

## LXVI.

Whereas the above-named (obliques) carry on or conduct the That obliques under ness. business of bankers in copartnership in the city of the style or firm of And whereas the above-bounden That obligor (principal) now carries on the business of a And whereas business. the said (obliques) have agreed at the request of the said (princi- That obliques pal) to (a) accept and discount notes drafts bills of exchange an account and other negotiable securities for him the said (principal) and with obligor, on having the also to advance and lend him such sum and sums of money not exceeding the sum of pounds as he may require for his con- secured by the venience and accommodation and also to keep a cash or running cipal and account with him the said (principal) upon having the balance of the said cash or running account for the time being which shall or may at any one time hereafter become due and owing from the said (principal) [or any person or persons with whom he may hereafter enter into partnership] to them the said (obliques) for other the person or persons for the time being carrying on the said business of bankers] secured to be paid to them the said (obliques) their executors administrators and assigns for such person or persons as aforesaid by the joint and several bond of the said (principal) and of the said (sureties) as his sureties in the penal sum of pounds So nevertheless that no greater sum be ultimately recoverable on the said bond or the said (principal) and (sureties) or any or either of them their any or either of their heirs executors or administrators be liable to

carry on busihave opened balance due thereon bond of prinsureties.

ADVANCING GOODS TO A

<sup>(</sup>a) If the bond is to be a security for goods advanced to a SECURITY TO tradesman, omit the rest of the recitals, and say, "to supply him with goods in the way of his trade as a upon the said (principal) and (sureties) entering into a bond in TRADESMAN. the penalty above mentioned."

LXVI. FOR SECURITY OF BANKERS.

Condition that if principal or sureties will pay

owing to the obligees,

all the sums

and interest for the same after they shall become due.

and commission and expenses,

pay more on account thereof than the sum of pounds. Now the condition of the above-written bond or obligation is such that if the above-bounden (principal) and (sureties) or either of them their or either of their heirs executors or administrators shall on demand well and truly reimburse and pay unto the said (obliques) or any of them or their or any of their executors or administrators for other the person or persons for the time being carrying on the said business of bankers all such sum and sums of money which shall or may at any time be due and owing to the said (oblinees) or any of them their or any of their executors or administrators for other the person or persons for the time being carrying on the said business of bankers] for or on account of (a) any such drafts notes or bills of exchange as aforesaid or for money lent and advanced paid or discharged by the said (obliques) or any of them their or any of their executors or administrators [or other the person or persons for the time being carrying on the said business of bankers | for or on the account or for the use of the said (principal) his executors or administrators or for him and any person or persons with whom he may hereafter enter into partnership or be concerned in trade or in which he his executors or administrators for other the persons last aforesaid] shall by means of an account stated or in any other manner whatsoever become indebted to the said (obligees) or any of them or their or any of their executors or administrators [or the person or persons for the time being carrying on the business of bankers] And shall well and truly pay or cause to be paid to the persons or person entitled thereto interest for such sum and sums of money as aforesaid after the rate of

pounds for every one hundred pounds by the year to be computed from the time or respective times of advancing paying or disbursing the same respectively or of the same becoming due and also the lawful and usual commission charges and expenses incident or occasioned by the transactions aforesaid or any of

PERSONS ADVANCING GOODS TO A TRADESMAN.

SNCURITY TO (a) "any goods which may at any time or times hereafter be sold by them to the said (principal) or be sent and delivered to him by his order Then the above written bond &c."

them whether such payments advancements or disbursements shall be by cash notes drafts bills of exchange or otherwise howsoever or in whatever manner or on whatever account the said debts shall become due And also that if the said (obligors) then bond to (shall indemnify as ante 115) then the above-written bond or obligation shall be void and of no effect Provided always that Proviso that the said (principal) and (sureties) or either of them their or no larger sum than pounds either of their heirs executors or administrators shall not be shall be reliable to pay by virtue of this bond any greater sum than the the bond. said sum of pounds but that this bond shall be a continuing security to that amount for the sums from time to time owing as aforesaid.

LXVI. FOR SECURITY OF BANKERS.

LXVI a. FOR SECURITY OF AGENT.

# LXVI a.

Agreement to act as agent for solicitor in the country,

Agreement for bond.

Condition that if obligor shall pay all monies which shall be due bond shall be void.

Whereas the said above-named (obligee) hath agreed at the request of the above-bounden (obligor) to act as the agent of the said (obligor) in the city of London and to conduct such actions suits and other professional business as a solicitor and attorney as the said (obligor) shall from time to time instruct and direct the said (obligee) to perform carry through and complete in the said city of London And whereas for the better securing all sums of money and expenses which the said (obligee) may pay disburse or be put unto by reason of the premises the said (obligor) hath agreed to execute the above-written bond Now the condition of the said bond is that if the said (obligor) his heirs executors administrators do and shall from time to time and at all times during such time as the said (obligee) shall act as the agent of the said (obligor) on the day of and the of in every year pay and satisfy unto the said (obligee) his executors administrators or assigns all such sum and sums of money as shall or may from time to time upon such half yearly settlement of accounts between the said (obligor) and (obligee) appear to be justly due and owing to the said (obligee) his executors or administrators as such agent as aforesaid Then the said bond shall be void and of no effect.

LXVII. FOR PERPORM-ANCE OF COVE-NANTS.

# LXVII.

The (a) condition of this obligation is such that if the above- Condition that bounden (obligor) his heirs executors and administrators do and shall from time to time and at all times hereafter [pay the said nants containpounds and observe and perform all and singular of even date. the covenants and agreements [reserved and] contained in an (or in the said hereinbefore recited) indenture bearing even date herewith and made or expressed to be made between the abovenamed (obligor) of the one part and the said (obligee) of the other part on the part of the said (obligor) to be [paid and] performed and shall (indemnify obligee as ante 115) Then the said Bond to be obligation to be void.

if obligor shall perform coveed in indenture

void.

<sup>(</sup>a) If this bond is taken from an assignee of leaseholds, the Assignee of lease and assignment to him are usually recited as in Vol. I. p. leaseholds. 17. (34) (35). A covenant to pay the rent and perform the covenants is the more usual security. See a form, Vol. I. 95. (21.)

LXVIII.

## LXVIII.

Agreement to take clerk into service,

Agreement to become sure-

Condition that if obligor shall pay over all monies.

and shall not deface or waste property.

Whereas the above-named (obligees) carry on the trade or busiand they have agreed to take the aboveness of bound (principal) into their service as their clerk and have agreed to retain and continue him in their service on his obtaining two respectable persons to become sureties for his duly and faithfully performing all the duties of the said office or situation in manner hereinafter mentioned And the said (sureties) have at the request of the said (principal) agreed to become such sureties Now the condition of the above-written obligation is such that if the said (principal) shall from time to time and at all times hereafter during his continuance in the service of the said (obligees) well and satisfactorily account for and pay over and deliver to the said (obligees) their executors and administrators all and every such sum and sums of money and securities for money goods and effects whatsoever which he the said (principal) shall receive for their or either of their use or which shall at any time or times be intrusted to his care by them the said (obligees) or either of them or by their or either of their correspondents or cus-And shall not at any time embezzle conceal waste make away with obliterate deface or in any wise injure any of the money securities for money books papers writings goods or property of them the said (obligees) or either of them or of their or either of

Survivor of obligees and fresh partners.

<sup>(</sup>a) If the guarantee is to extend to the survivor of the obligees or to any new partners, see the proper words ante 133, and repeat them throughout the form. That such words are necessary, if consistent with the intention of the parties, see Arlington v. Merricke, 2 Saund. 411, Wright v. Russell, 3 Wils. 530, 2 Bl. 934. S. C. Barclay v. Lucas, 1 T. R. 291. n. (a). Metcalfe v Bruin, 2 Camp. 422.

their correspondents or customers (a) And shall (indemnify obligees as ante 115) And if the said (principal) shall act and conduct himself at all times with fidelity integrity and punctuality in the matters or things which shall or may be reposed in him Then and in such case the above obligation to be void and of no effect Provided always nevertheless and it is hereby declared that the said (two sureties) or their respective heirs executors or administrators are not separately or individually to be liable for more than pounds each part of the said sum of pounds mentioned in the said above-written bond or obligation.

LXVIII. FOR CLERKS.

<sup>(</sup>a) If there is some particular secret to be kept, the following clause should be introduced:

<sup>&</sup>quot;And do and shall keep all the secrets of the said (obligees) and in particular if the said (principal) shall not by any means Not to divulge whatsoever either directly or indirectly divulge discover or make secrets. known to any person or persons without the consent of the said (obligees) in writing first had and obtained the said art or invention or any matter or thing relating thereto."

LXVIII a. POR CLERKS.

### LXVIII a.

Application to be taken as clerk and agreement thereto.

That alterations may take place in firm.

Agreement to obviate inconveniences arising therefrom.

Condition that if obligor shall faithfully serve obligees.

And if obligor

bezzle monies,

Whereas the said above-bound (obligor) hath applied to and requested the above-named (obligees) to employ him as a clerk in their business which they have agreed to do upon the abovebound (sureties) becoming sureties for his fidelity and good behaviour in the manner and to the extent hereinafter mentioned And whereas various alterations frequently arise and take place in [banking-houses] by the change of partners and also by their shares and proportions in the trade being increased or diminished And whereas inconveniences have arisen from the necessity of altering the securities given by clerks in order that they may correspond with such changes and alterations And whereas to obviate these inconveniences it hath been agreed that the abovewritten bond and the security hereby given and intended shall be efficacious and valid against the said (obligor) and (sureties) whatever alteration may take place in the partners now composing the firm of and company Now the condition of the above-written bond or obligation is That if he the said (obligor) shall and will from time to time and at all times hereafter during his existence in the service or employment of the said (obligees) or any of them or any other person or persons becoming a partner or partners with them or any of them or of any successor or successors in their said trade or business or the executors administrators or assigns of any of them well faithfully and diligently serve them and each and every of them and their and each and every of their partners and successors and the executors administrators and assigns of them and each and every of them according to the best and utmost of his power skill and knowledge in about and concerning every matter or thing relating to the said business And if the said (obligor) shall not nor will at any time hereafter during his continuance in such service or employment as aforesaid lose embezzle purloin consume misapply or unlawfully make away with detain or keep any money bond or bonds bill or bills note or notes draft or drafts security or securities for money book or books paper or papers goods chattels effects or any other thing or things whatsoever which shall be entrusted to his care or otherwise come to his hands custody possession or power on account of or otherwise belonging to the said (obligees) or any of them or any of their partners or successors or the heirs executors or administrators customers or employers of them or of any of them And if or act frauduthe said (obligor) shall not nor will during his continuance in such lently or deservice or employment as aforesaid make any false or fraudulent entry or entries in any book or books of account or do or commit or willingly permit or suffer or aid or assist or exercise or conceal any fraud deceit matter or thing whereby or by means whereof any loss detriment or damage may happen to the said (obligees) or any or either of them or any or either of their partners or successors as aforesaid or the heirs executors or administrators customers or employers of them or any of them in their or any of their lands tenements goods chattels and effects fame reputation or credit or otherwise howsoever. Then the above-written void. bond or obligation shall be void and of no effect Provided Provision that always and it is hereby agreed and declared between the said tion of new (obligor) (obligees) and (sureties) that no change or alteration firm shall not in the firm or house of the said (obligees) either by the intro- affect the seduction of a new partner or new partners or by the death of any or either of the said partners or by any or either of their shares being increased or diminished shall anywise affect or tend or be considered to impeach the above-written bond or obligation or the security thereby or hereby given by the said (obligor) and (sureties) but that notwithstanding any such change or changes alteration or alterations as aforesaid the said (obligor) and (sureties) their heirs executors and administrators shall be liable and accountable under the same to such person or persons and in such share or shares proportion or proportions as he or they would be fairly and justly liable unto the said (obligees) their heirs executors or administrators Provided always and it is hereby stipulated and declared that the said (sureties) their executors and administrators as sureties for the said (obligor) shall not be liable to pay or be answerable for more in the whole than the sum of pounds of lawful money of Great Britain and Ireland.

LXVIII a. POR CILERRE

ceitfully.

the introduc-

LXIX. FOR COLLECTOR.

### LXIX.

That obligee is possessed of chapel.

And hath occasion for a collector and superintendent.

That obligor has appointed principal.

Agreement as to his per centage.

And that sureties should join in security.

Condition that if principal shall collect the monies.

Whereas the said (obligee) is possessed of or well entitled to a certain messuage tenement or chapel called Chapel for an unexpired term of years and is the officiating minister thereto And whereas the said (obligee) as such minister as aforesaid hath occasion for a person as well to collect and receive the rents of the pews of the said messuage tenement or chapel and other dues emoluments and monies belonging to the said (obligee) as also to superintend and take care there-And whereas the said (obligee) hath appointed the said (principal) to the said office of collector of the said rents and monies and superintendent of the said messuage tenement or chapel And whereas the said (principal) hath accepted the said office and hath agreed to execute the duties thereof in consideration of being allowed to retain for his own use and benefit two pounds ten shillings for every one hundred pounds of the first five hundred pounds received of the said rents of the said pews and five pounds for every one hundred pounds received of such rents over and above the first five hundred pounds whereas it hath been agreed that for securing the faithful performance of the duties of the said office by the said (principal) he the said (principal) should enter into the above-written bond or obligation with such condition for making the same void as hereinafter And whereas the above-bounden (sureties) have agreed to join with the said (principal) for his due performance of the duties of the said office and for his making such payments as hereinafter are mentioned Now therefore the condition of the above-written bond or obligation is such that if the said (principal) shall from time to time and at all times use his best endeavours to collect and receive all rents dues emoluments and monies whatsoever belonging or in any wise appertaining to the

said (obligee) or which shall be payable to him the said (principal) as such superintendent as aforesaid And do and shall from time to time and at all times keep a true and faithful account of all such rents dues emoluments and monies so to be received And do and shall from time to time whenever thereto required by the said (obligee) his executors administrators and assigns well and truly render to the said (obligee) his executors administrators or assigns a faithful account of all such rents dues emoluments and monies so received by him And do and and pay over shall from time to time whenever thereto required as aforesaid pay over to the said (obligee) his executors administrators or assigns all and every the said rents dues emoluments and monies so received by him And do and shall from time to time whenever thereto required as aforesaid deliver up to the said (obligee) all and every the books and writings kept and used by the said (principal) as such collector and superintendent as aforesaid And do and shall in every other respect faithfully perform and and in every discharge all the duties of or belonging to the said office as aforesaid Then and in such case the above-written bond or obligation shall be void otherwise the same shall remain in full force and virtue.

LXIX. PA P COLLECTOR.

and render an account there-

and deliver over all books.

respect per form the duties of the office.

LXX. TO REPIIND LEGACY.

### LXX.

Bequest of legacy. That the amount of the debts has not been ascertained, but belief that there are sufficient accets.

Agreement to pay legacy.

if personal estate shall prove insufficient to discharge debts and legacies;

and legatee shall refund his proper proportion;

and shall indemnify executor from all demands;

bond to be void.

(Recite will of testator bequeathing legacy—death of testator and probate of his will as in Vol. I. p. 9.) And whereas the amount of the debts of the said (testator) hath not vet been ascertained but it is believed that the assets of the said (testator) will be sufficient to pay his debts and the several legacies given by his said will And whereas the said (obligee) (executor) hath accordingly agreed to pay to the said (obligor) his pounds on his entering into the above-written said legacy of Condition that obligation with such condition as is hereinafter contained Now the condition of the above-written obligation is such that if the personal estate of the said (testator) deceased shall not prove sufficient to pay his just debts and funeral and testamentary expenses and all the pecuniary legacies given by his said will then if the said (obligor) his heirs executors or administrators days next after notice thereof to him or them should within given in that behalf and on proof of such deficiency well and truly repay and refund to him the said (obligee) his executors administrators or assigns the said sum of pounds so paid to him as aforesaid or so much thereof as shall together with a proportionable part of the other pecuniary legacies under the said will be sufficient to make good such deficiency And also if the said (obligor) his heirs executors or administrators should from time to time and at all times hereafter save defend keep harmless and indemnified the said (obligee) his executors and administrators and the estate of the said (testator) of and from all costs charges damages and expenses which shall or may happen or come to him or them or the estate of the said (testator) for or by reason of the said (obligee) having paid the said (obligor) the pounds in full for the said legacy as aforesaid or any matter cause or thing relating thereto. Then the abovewritten obligation to be void and of no effect.

LXXI. POST ORIT.

### LXXI

WHEREAS the above-named (obligee) hath agreed with the Contract for above-bounden (obligor) for the purchase of the sum of pounds to be paid to him the said (obligee) his executors administrators or assigns in the event of his the said (obligor) surviving AB of &c. his uncle but not otherwise at or for the price or sum of pounds And whereas in pursuance of the said recited agree- Payment of ment the said (obligee) hath this day paid the sum of pounds of lawful money of Great Britain and Ireland unto the said (obligor) at or before the sealing and delivering of the abovewritten obligation (the receipt whereof the said (obligor) doth hereby acknowledge) And whereas upon the treaty for the pur- Agreement chase of the said sum of pounds it was agreed that the payment thereof in such event as aforesaid should be secured by the bond of the said (obligor) Now therefore the condition Condition that of the above-written obligation is such that if the said (obligor) should be living at the time of the decease of the said (uncle) and in such case if the said (obligor) his heirs executors or ad-uncle; ministrators should well and truly pay or cause to be paid unto the said (obligee) his executors administrators or assigns within six calendar months next after the decease of the said (uncle) as aforesaid in the life-time of the said (obligor) the sum of pounds of lawful money of Great Britain and Ireland Or if the or should die said (obligor) should happen to depart this life in the life-time of of obligor, the said (uncle) Then this present obligation to be void.

purchase.

consideration.

if obligor should be living at the decease of his and should pay the sum advanced.

bond to be void.

LXXII.

FOR ARBITRA-

#### LXXII

That disputes exist and agreement to refer them to arbitration, and in case of difference to choose umpire.

and that the award shall be made a rule of court.

Condition that if obligor shall abide by award,

so that the award be delivered by a certain day,

Whereas (a) divers differences and disputes have arisen between the above-bounden (obligor) and the above-named (obligee) And whereas it hath been agreed that the same should be referred to the arbitration of (arbitrators) of &c. And in case the said (arbitrators) shall take upon themselves such arbitration and shall not agree in making an award then that the said (arbitrators) should choose an umpire in order to determine the matter in dispute And that the award order and determination of the said (arbitrators) or of such umpire so to be chosen as aforesaid shall be binding and conclusive upon the said parties in dispute and shall be made a rule of the Court of [King's Bench] at West-Now the condition of the above-written bond or obligation is such That if the above-bounden (obligor) his heirs executors and administrators should on his and their part in all things well and truly obey abide by observe perform fulfil and keep the award order arbitrament and determination of them the said (arbitrators) arbitrators indifferently elected and chosen as well on the part and behalf of the said (obligor) as of the said (obligee) and to arbitrate award order judge and determine of and concerning all and all manner of action and actions cause and causes of action suits bills specialties bonds judgments quarrels controversies trespasses damages and demands whatsoever at any time or times heretofore had made moved brought commenced sued prosecuted done suffered committed or depending by or between the said (obligor) and (obligee) so as the said award be made by the said (arbitrators) in writing and ready to be delivered to the said parties in difference on or before the day of now next

<sup>(</sup>a) The particulars of the matters in difference may here be recited, or they may be mentioned generally as above.

ensuing And in case the said (arbitrators) shall not agree in their award then if the above-bounden (obligor) his heirs executors and administrators should on his and their part and behalf in all things well and truly stand to obey abide by observe perform fulfil and keep the award order arbitration umpirage and determina- abide by his tion of such person as shall be nominated and chosen by the said (arbitrators) so as such umpire so to be chosen as aforesaid do and shall make his award order umpirage and determination in writing and ready to be delivered to the said parties in difference on or before the day of now next ensuing Then the above-written bond or obligation shall be void and of no effect And the said (obligor) doth hereby agree that his submission to the award or umpirage above mentioned shall be made a rule of his Majesty's Court of [King's Bench] at Westminster. (a)

LXXII. FOR ARRITRA-TION.

and if umpire is appointed if obligor shall award.

Bond to be

Agreement that submission shall be made a rule of court.

<sup>(</sup>a) For other provisions applicable to bonds of this nature, see Other provisions. ante, XLVI.

LXXII a.

## LXXII a.

That obligor has agreed to execute indentures on having an indemnity. Condition that if obligors shall indemnify obligee from all losses to be sustained in consequence of executing indentures:

(Recite the circumstances on which the necessity for the indemnity arises) And whereas the said (obligee) hath agreed to execute the said indentures on being indemnified from all loss which can or may be sustained in consequence thereof in the manner hereinafter mentioned. Now the condition of the above-written bond or obligation is that if the said (obligors) or some or one of them or their or some or one of them their heirs executors or administrators do and shall from time to time and at all times hereafter well and sufficiently save and defend keep harmless and indemnify the said (obligee) his heirs executors and administrators and his and their estates and effects whatsoever and wheresoever of from and against all and all manner of suits actions claims and demands costs charges damages losses and expenses whatsoever which shall or may at any time or times hereafter either at law or in equity be had commenced carried on or prosecuted or made against or upon the said (obligee) his heirs executors or administrators or which his or their estate or effects shall or may pay bear sustain incur or be put unto for or by reason or on account of the said (obligee) having executed the lastly hereinbefore recited indentures of lease and release or either of them or for or by reason or on account of any clause article matter or thing therein respectively contained or for or by reason or on account of any other matter or thing concerning the premises or in anywise relating thereto Then the above-written bond shall be void and of no effect.

bond to be void.

LXXII b. MISCRLLANGOUS

#### LXXII h

Whereas the above-bounden (obligors) have contracted and Agreement to agreed in writing to build a chapel and other buildings on a certain piece or parcel of land situate at &c. according to certain drawings particulars and specification therein mentioned or thereto annexed at or for the price or sum of pounds And Agreement to whereas the said (builders) have agreed to enter into the abovewritten bond or obligation for the due performance of the said contract or agreement Now therefore the condition of the abovewritten bond or obligation is that if the above-bounden (builders) or either of them or their or either of their heirs executors or administrators do and shall within months from the date thereof build erect complete and finish the said chapel and other buildings in a good and workmanlike manner and in every respect conformably and according to the said contract or agreement and the covenants provisoes and conditions contained therein and the drawings particulars and specification annexed hereto Then the above-written bond or obligation shall be void but otherwise the same to remain in full force and virtue.

LXXII c.

## LXXII c.

Whereas the above-bounden (obligor) hath this day drawn

That obligor hath drawn a bill on obligee which he hath agreed to accept. Agreement to give bond as a security.

Condition that if obligor shall furnish obligee with the means of satisfying the bill,

and signed a bill for the sum of pounds on the said (obligee) and the said (obligee) hath consented at the request of the said (obligor) to accept the same when it shall become due And the said (obligor) hath agreed to execute the above-written bond as a security to the said (obligee) against all loss to be sustained by him his executors or administrators on account of accepting the said bill Now the condition of the above-written bond or obligation is that if the said (obligor) his heirs executors or administrators do and shall well and truly furnish the said (obligee) with the means of paying and satisfying the said bill when the same shall be presented for payment and all sums which may be due thereon whether for principal or interest and do and shall well and sufficiently indemnify and save harmless the said (obligee) his heirs executors and administrators from all actions suits charges payments and damages by reason or on account of the said bill Then the said above-written bond or obligation shall be void and of no effect.

bond shall be

LXXVII d. MISCELLANEOUS

# LXXII d.

(Recite the indenture indentures or will vesting the property in the obligor as trustee) And whereas the said (obligor) hath That trustee agreed to enter into the above-written bond as a security for the enter into a due execution of the trusts declared by the said indenture. Now the condition of the above-written bond or obligation is of trusts. that if the said (obligor) his heirs executors and administrators Condition that shall well and faithfully account for pay apply and dispose of duly apply all and every the sum and sums which shall come to his hands as such trustee as aforesaid according and conformably to the trusts declared of and in the said hereinbefore recited indenture in every respect Then the above-written bond shall be void bond shall be and of no effect.

has agreed to bond for the due execution

if trustee shall

LXXII e.

#### LXXIIe

Commencement. KNOW ALL MEN (a) by these presents that I (obligor) of am held and firmly bound to (obligee) of in the sum of pounds (double the money to be secured) of lawful money of Great Britain and Ireland to be paid to the said (obligee) his administrators executors or assigns For which payment I bind myself my heirs executors and administrators and every of them firmly by these presents Sealed with my seal this

day of in the year of our Lord 18

Condition that if obligor shall pay the sum of pounds and interest,

Now the condition of the above-written bond or obligation is such that if the above-bounden (obligor) his heirs executors or administrators shall upon the day of truly pay or cause to be paid unto the said (obligee) his executors administrators and assigns the full sum of pounds of lawful money of Great Britain and Ireland with interest for the same after the rate of five pounds for every one hundred pounds by the year without any deduction or abatement whatsoever Then the above-written bond or obligation shall be void and of no effect or otherwise shall remain in full force and virtue.

bond to be

SEALED AND DELIVERED being first duly stamped in presence of

[witness]

Entire form.

<sup>(</sup>a) A form of one of the most simple bonds is here given entire, as it was thought that its insertion might assist the adoption of the preceding forms.

\*\* A few late cases as to the proper stamps to be impressed on bonds, may here be noticed. It has not been thought necessary however, to transcribe the clauses of the Stamp Act relating to bonds.

STAMPS APPROPING

A bond to pay rent, is a bond for the payment of a definite and certain sum of money, within the meaning of the 55 Geo. 3. c. 184, and is therefore liable to an advalorem stamp. Attree v. Auscomb, 2 Mau. and Sel. 88. But a bond, given by a vendor to the purchaser of a public house, conditioned not to convert another house of the vendors into wine vaults, under the penalty of five hundred pounds, does not require an ad valorem stamp.

Stamps on bonds. Bond to pay

v. King, 1 Stark, 119. If several persons bind themselves in a penalty by one bond, As to the and severally and not jointly, and the bond is conditioned for the necessity of performance by each and every of them of the same thing, one several stamps. stamp is sufficient. Bowen v. Ashley, 1 N. R. 274. But where the interests are distinct, there must be as many stamps as there

See Bowen v. Ashley. Goodson v. Forbes, 6

as it is only to secure a sum payable on a contingency. Hughes

are interests. Taunt. 175.

The addition of another obligor, in a bail bond, after the bond As to addition has been executed but before the sheriff has accepted it, if it be of obligors made with the assent of the sheriff and the agent of the prior of a bond. obligors, does not vacate the bond or render a new stamp necessary. Matson v. Booth, 5 Mau. and Sel. 223. And see Lewis v. Bingham, 4 B. and A. 672, and Hall v. Chandless, 4 Bing. 123.

after execution

A bond to secure the payment of money and interest, and also Asto collateral for the performance of collateral acts, requires only the ad valo-agreement in rem stamp appropriated to the principal sum, where that stamp bond. exceeds one pound fifteen shillings. Dearden v. Binns, 1 Man. and Ry. 130.

A bond for securing all sums which are already, or may here. As to bond for after be advanced in account current, although the penalty be less securing any than twenty thousand pounds, requires an ad valorem stamp of may be adtwenty-five pounds, under the 55 Geo. 3. c. 184. as reference vanced. will be had to the nature of the condition of the bond, without regard to the amount of the penalty. Scott v. Allsopp, 2 Pri. 20. And see Simson v. Cooke, 1 Bing. 452. But where the liability is not to exceed a certain sum in the whole, the stamp need only be for the sum specified. Thus a bond to indemnify bankers for all advances to be made within ten years, not exceeding five thousand pounds in the whole, together with interest on such advances, the stamp was held to be limited to five thousand pounds. Williams v. Rawlinson, 3 Bing. 71. And see Kirby v. D. of Marlborough, 2 Mau. and Sel. 18.

It is enacted by the 55 Geo. 3. c. 184, that where in Eng- When bond is land a bond for the performance of covenants or agreements,

STAMPS APPECTING BONDS

another in-

(other than for the payment or transfer of any sum of money, or annuity, or any share in any of the stocks or funds) shall be contained in the same deed or writing with any other matter or thing, the same shall not be charged separately, but the whole shall be considered as one deed, and be charged accordingly under its proper denomination.

Under this section it has been held, that an agreement for the sale of a house, with a clause binding the parties to a performance of it in a penalty, may be stamped with an agreement stamp, and not with a bond stamp. Knight v. Crockford, 1 Esp. 190. And see Mountsey v. Stephenson, 7 B. and C. 403,

and ante q. 101.

Bond signed abroad.

Bond relating to friendly society. A bond of foreign stock, signed in Paris but issued in Enggland, does not require a stamp of this country. Yrissari v. Clement, 2 Carr. and Pay. 223, and see ante p. 102.

A bond conditioned for the safe custody of a box belonging to a friendly society, need not be stamped. See 33 Geo. 3. c. 54, s. 4. Carter v. Bond, 4 Esp. 253.

LXXIII.
COMMENCEMENTS AND INTRODUCTORY
CLAUSES.

# WILLS.

# COMMENCEMENTS AND INTRODUCTORY CLAUSES.

# LXXIII.

- (1) This is the LAST WILL AND TESTAMENT of me Commencement.

  A B of

  (2) I do (a) hereby revoke all former wills and codicils made Revocation of former wills.

  by me.
- (3) I desire to be buried in churchyard at as little expense as possible.

  Desire of hurial in particular place.
  - (4) I desire that I may be buried in a manner befitting my Desire of

<sup>(</sup>a) This clause is often placed at the end of the will. As it is Revocation unnecessary, its insertion any where is of little consequence.

LXXIII.
COMMENCEMENTS AND INTRODUCTORY
CLAUSES.

rank in life and that my body may be carried down and laid in the family vault in church in the county of

burial in particular place. Appointment (5) I appoint (a) A B of &c. and C D of &c. executors of this my will (for legacy to executor see post LXXVII. 15, a.)

LXXIV. RECTTALS.

# LXXIV.

# RECITALS. (b)

A policy of insurance on testator's life. (c)

(1) Whereas by an instrument or policy of assurance bearing date the day of and numbered the stock and funds of the society are made liable to the payment to my executors administrators and assigns within three months

Executors.

(a) The appointment of executors is generally inserted at the end of the will; it would, however, appear to be more correct to appoint the executors before their duties are prescribed, or property is given to them.

Necessity of

(b) For all the usual recitals, see Vol. I. Division B. which with a very slight variation will all equally serve for wills as for deeds. Recitals, however, are seldom inserted in wills; but if they should be required, it is hoped that with the assistance of the above forms and those in Division B. no difficulty will be found in framing them. It may be observed that recitals are most conveniently inserted in the part of the will to which they immediately relate, and not at the commencement of the instrument, as in a deed.

Policy.

(c) See a fuller recital of a policy of assurance, Vol. I. Division B. 44.

after my decease shall be made known at the office of the said society of the sum of pounds and such other sum or sums of money as shall become payable by way of bonus.

LXXIV. BROTTALS

(2) Whereas I now carry on the trade or business of a in copartnership with AB and CD under the firm of

Carrying on trade in copartnership.

(3) Whereas I now carry on the trade or business of a at.

Trade.

(4) And whereas I am desirous that the said trade or business and desire to should be carried on after my decease by my trustees hereinafter on by trustees. named or the survivor of them or the executor or administrator of such survivor for the benefit of my family as hereinafter mentioned.

(5) Whereas under the will of my brother A B late of deceased I am entitled after the death of my mother to the reversionary pounds three per cent. consolidated bank annuities.

That testator is entitled to a

(6) Whereas under and by virtue of certain articles of agree- That testator ment bearing date on or about the day of between myself of the first part my wife (then Mary T. spinster) sum of stock of the second part and (trustees) of the third part and entered his wife. into previously to and in consideration of my marriage with my said wife I the said A B shall become entitled in the event of my surviving my said wife to the sum of pounds three per cent. consolidated bank annuities.

will become and made entitled to a if he survive

(7) Whereas I have contracted with A B of &c. for the purchase of a certain messuage or tenement and premises situate at for purchase of at or for the sum of in the county of pounds.

That testator has contracted premises.

(8) Whereas by indentures of lease and release bearing date respectively on or about the day of the release being made or expressed to be made between &c. divers {messuages lands tenements and hereditaments} situate

Recital of indentures of lease and release whereby certain hereditaLXXIV.

ments were conveyed to trustees to sell, and to apply the proceeds as testator should by will direct. at &c. and therein described were for the considerations therein mentioned granted and released by me the said A B to Z Y and C D their heirs and assigns Upon trust with the consent of myself to sell the same in the manner therein mentioned and to stand possessed of and interested in and apply the sums arising from such sale and the rents and profits until such sale should take place upon such trusts as I should by any deed to be executed as in the said indenture of the lease is mentioned or by my will or any codicil thereto to be by me signed (a) and published in the presence of and attested by three or more credible witnesses direct or appoint and in default of such direction or appointment and so far as such direction and appointment should not extend upon certain trusts for the benefit of me the said A B.

Indentures of lease and release, whereby hereditaments are limited to trustees to studies as testatorshould appoint. (9) And whereas by indentures of lease and release and settlement bearing date respectively on or about the and days of the release and settlement being made or expressed to be made between &c. certain {manors} and hereditaments situate in in the county of were (in consideration of my marriage with the said Mary ) limited (b) and assured from and after the decease of me the said A B and in default of issue of me the said A B and my said wife to such uses upon and for such trusts intents and purposes and with under and subject to such powers provisoes and declarations as I the said A B should by any deed (c) or instrument in writing executed as in the same indenture of release of settlement is mentioned or in and by

"Publishing" a will.

Practical direction.

<sup>(</sup>a) The words "and published" are almost always inserted in this place in deeds. That publication is not a necessary part of a will, however, see Peate, v. Ongley, Vin. Ab. tit. Dev. N. 7. pl. and in 12; the case of Moodie v. Reid, 7 Taunt. 355, Gibbs C. J. said he did not know what the publication of a will was. And see 1 Madd. 516, 2 Madd. 156. But see contra Ross v. Ewer, 3 Atk. 61. In the deed creating the power, therefore, these words should be omitted, but if they are inserted, the recital of the deed must follow the expression.

<sup>(</sup>b) The limitations will of course vary with the circumstances. (c) See Vol. I. Division B. Recital 25, note +.

my last will and testament in writing or any codicil thereto to be by me signed and published in the presence of and attested by three or more credible witnesses direct limit or appoint and in default of such direction limitation or appointment and so far as any direction limitation or appointment should not extend to the use of the heirs and assigns of me the said AB.

LXXIV. RECITALS.

(10) Whereas by an indenture bearing date the dav of and made between &c. a certain sum of stock and premises was (for the considerations in the said indenture mentioned) assigned by the said AB to the said (trustees) in trust to pay the interest and dividends thereof to me the said T L and my life, and after assigns for my life and after my decease in trust for all and every or such one or more exclusively of the other or others of my chil-ren as he shall dren with such provisions for their respective maintenance education and advancement and in such shares if more than one and with such restrictions and in such manner as I shall by deed to be executed as in the said indenture is mentioned or by my last will and testament in writing or any codicil thereto to be by me signed and published in the presence of and attested by three or more witnesses from time to time direct or appoint and in default of such direction or appointment and so far as any such if incomplete shall not extend In trust for all and every my children as tenants in common.

Recital of indenture whereby stock trust to pay dividends to testator during his decease upon his childappoint.

(11) Whereas under the last will and testament of my late That testator in the county of is entitled to a uncle A B I am entitled to the manor of L for an estate of inheritance in fee simple in remainder expectant on the decease of TB his brother and the failure of issue of his body.

mainder under a will.

LXXV. CHARGES AND DIRECTIONS AS TO PAYMENT OF DEBIN AND LEGACIES.

### LXXV.

# CHARGES AND DIRECTIONS AS TO PAYMENT OF DEBTS AND LEGACIES.

General charge of debts [and legacies] on real estates.

- (1) I hereby charge all my real and personal estate of what nature or kind soever with the payment of all my debts funeral and testamentary expenses [and legacies] (a)
- Charge of debts [and lepersonality.
- (2) I direct that in case my personal estate shall prove insuffigacies] on real cient for the payment of my debts funeral and testamentary exestates in case of deficiency of penses [and legacies] that the same shall be a charge upon my real estate.

Power to raise deficiency by sale or mortgage.

(3) And if my personal estate shall be insufficient for the payment of my debts [and legacies] then I declare my will to be that it shall be lawful for the said (trustees) [and the survivors] and survivor of them and the executors administrators and assigns of such survivor to raise sufficient to pay the same by sale or mortgage of a competent part of my real estates [hereinafter devised] (Trustees receipts sufficient discharges, see post CLXII.)

Direction that real estate may be resorted to

(4) And I direct that if any difficulty shall arise in getting in my personal estate it shall be lawful for the said (trustees) and

Charge of debts when proper.

<sup>(</sup>a) This charge will be sufficient to include all debts and legacies contracted or bequeathed as well after as at the time of the will, see Habergham v. Vincent, 2 Ves. 209. 4 Bro. C.C. 353, S.C. Wilkinson v. Adam, 1 Ves. and Bea. 445. Where it is doubtful whether the personal estate will be sufficient for the payment of all the debts, this charge should be adopted as it will authorise a sale, if it should be necessary; but where the deficiency of the personalty for such purpose is certain, the real estate or a part thereof should be devised to the executors upon trust to sell for the payment of the debts, See post LXXXV.

the survivor of them and the heirs executors administrators and assigns of such survivor if they or he shall think it expedient to DIRECTIONS AS resort to my real estate or any part thereof as hereinbefore is directed for the payment of my debts and legacies but I direct LEGACES. that when my said personal estate shall be gotten in the said before perso-(trustees) and the survivor of them and the executors administrators and assigns of such survivor shall make good to my real estate so much as shall have been thus taken from it by an fled. equivalent purchase of lands to be settled to the uses herein [before limited of and concerning the said real estate.

TO PAYMENT OF DEBTS AND

nal estate is got in, but that real estate shall be indemni-

(5) And I direct that it shall be lawful for my executors here- Direction that inafter named if they shall think proper to continue any sum or executors may sums of money which shall be placed out on security on such se-money curities and for such time as they shall think fit.

continue on security.

(6) I direct my executors hereinafter named to pay all such Direction to debts as they shall think proved to be owing from me at the pay such debta time of my decease and adjust settle compound and compromise as shall be and refer to arbitration (a) all accounts reckonings matters and settle all acthings between me and any other person or persons and give time (b) for the payment of such debts as shall be owing to me and accept such security for the same as they shall think ргорег.

proved, and to

(7) I exempt (c) my personal estate from the payment of all Exemption of

personal estate

(b) This authority should always be inserted where there are Practical dimany debts due to the estate, as without it the executor cannot rection. give time for the payment of debts, see Powell v. Evans, 5 Ves. 839.

(c) It may be observed that unless the real estate be ample, Payment of the creditors may always come upon the personal estate notwith- debts. standing this direction. Bicknell v. Page, 2 Atk. 79, Walker v.

<sup>(</sup>a) An executor may refer a matter to arbitration without Executor's a special authority, Brown v. Meverell, Dyer 216 b., but if less is power to subawarded than the executor would be entitled to at law, it will mit to arbitration. be a devastavit for the residue, Anon. 3 Leon, 53, Went. Off. Ex. 71, 160; a special power therefore should be given.

LXXV.
CHARGES AND
DIRECTIONS AS
TO PAYMENT
OF DEBTS AND
LEGACIES.

from debts and legacies. That particular sum shall be raised out of particular estate. my debts [and legacies] and I charge all my debts and legacies on my real estate.

(8) I hereby declare my will and mind to be that the said sum of pounds shall be raised out of my estate in shire.

LXXVI.

## LXXVI.

Proviso that personal estate shall be the primary fund, the rents and profits of lands during minorities the next, and the produce of the sale of part of the lands the ultimate fund for the payment of debts and legacies.

Provided always And I do hereby declare that my personal estate shall be considered by the said (trustees) as the primary fund for the payment of my debts and funeral and testamentary expenses and legacies And that the savings of the rents and profits of the said {manors &c.} hereinbefore devised accruing due during any such minority or minorities as aforesaid and also of the said {messuages &c.} hereinbefore directed to be sold as aforesaid until the sale or sales thereof shall actually take place shall be considered as the next And that the money arising by such last mentioned sale or sales shall be considered as the ultimate fund for that purpose notwithstanding which I leave it in full discretion of the said (trustees) and the survivor of them his heirs and assigns to sell the said last mentioned estates or any part thereof before my personal estate shall be gotten in and applied as aforesaid And I declare that any purchaser or purchasers of the said {messuages &c.} so devised to be sold shall not be bound to see that my personal estate or the rents and profits of the said {manors &c.} are or is previously paid and applied in payment and discharge of my said debts funeral and testamentary expenses and legacies.

Jackson, 2 Atk. 624. Such an exemption must be clearly expressed, as it is against the usual rules for the distribution of the assets, see Tower v. Rous, 18 Ves. 132.

LXXVII. DADTICULE AD DEVISES AND PROFIERR

## LXXVII.

WILLS.

#### PARTICULAR DEVISES AND BEQUESTS.

(1) I give and devise all that {messuage garden} and heredita- Devise of a ments called [which I lately resided in] with the ap- fee. purtenances situate and being at in the county of unto AB of &c. his heirs and assigns for ever.

(2) I give and devise all that my {messuage} and heredita- Devise to two unto my sons A in common in ments situate and being in the city of and B and their respective heirs and assigns for ever to have fee. and to hold the same as tenants in common. (a)

as tenants

(3) I give and devise unto my son X his heirs and assigns the Devise of pre-{messuage (b) or tenement} and premises situate at which I have contracted to purchase from chased in fee. pounds And Direction that A B of &c. at or for the price or sum of that if the title to the said {messuage or tenement} and pre- turn out bad, mises should prove to be bad and the purchase thereof cannot be completed then I direct that the said sum of shall sink into the residue of my personal estate.

mises contracted to be pur-

if title shall purchase mo-ney shall pounds sink into residue. (c)

(4) I give and devise my messuage or dwelling house in Devise of which I now reside situate at with the garden and appur- or any other

house to wife person for life.

(a) The words "and not as joint-tenants" are sometimes Practical diadded, but are quite unnecessary, and the more so, as the courts lean against joint-tenancy, see Heath v. Heath, 2 Atk. 121.

(b) Or there may be a recital of the contract as ante LXXIV Variation. when the premises will be referred to as,

" the said premises." (c) Or the money may be directed to be laid out in other lands, Practical disee post.

LXXVII.
PARTICULAR
DEVISES AND
BEQUESTS.

tenances unto [my dear wife] and her assigns for the term of her natural life [if she shall so long continue my widow and unmarried.]

Devise of moiety of lands in fee.

(5) I give and devise all that my undivided moiety or equal half part of and in certain {messuages} lands and hereditaments in the parish of in the county of unto A B of &c. his heirs and assigns for ever.

Bequest of leasehold house to trustees upon trust to permit wife to occupy the same during widowhood,

(6) I give and bequeath my leasehold house or tenement situate at in the county of with the appurtenances unto the said (trustees) their executors administrators and assigns for and during all the estate and interest which I shall have therein at the time of my decease Upon trust that they the said (trustees) and the survivor of them his executors administrators and assigns do and shall permit my wife Mary B to occupy and enjoy the same during her widowhood she paying observing and performing the rent covenants and agreements respectively reserved and contained in the lease of the house or tenement and after her decease or marriage the said house or tenement withthe appurtenances shall form part of the residue of my personal estate and effects.

and after her decease or marriage, house to form part of personal estate.

Bequest of next presentation. (7) I give and bequeath unto my son William his executors administrators and assigns All that the next turn or right of presentation of the parish church of in the county of together with the appurtenances for his and their absolute use and benefit.

Bequest of household goods to A B for life or absolutely. (8) I give and bequeath unto AB all my household goods furniture plate linen china wearing apparel watches trinkets books wines and other liquors utensils and effects whatsoever (a) [which shall be in or about my house in street square in the county of at the time of my decease] (b)

Practical direction.

Variation.

<sup>(</sup>a) The omission of these words will make it a general bequest of all household goods.
(b) "Except only all sum or sums of money cash and bank-

for [her] own absolute use and benefit [during the term of [her] natural life.]

LXXVII. DADWIGHT AD DEVISES AND REQUIESTS.

(9) I give and bequeath all and singular my personal estate Bequest of the and effects whatsoever and wheresoever unto and to the use of sonal estate. my son James B his executors administrators and assigns for his and their absolute use and benefit.

(10) I give and bequeath all my farming stock and utensils Bequest of whatsoever which shall be in or about my farm at to my son John.

farming stock.

(11) I give and bequeath unto my daughter Mary her execu- Bequest of lepounds of lawful by instaltors administrators and assigns the sum of money of Great Britain and Ireland to be paid to her or them by such instalments at such times and in such manner as are and is hereinafter mentioned (that is to say) the sum of calendar months after my decease the part thereof within sum of pounds within calendar months after my decease &c. &c.

ments.

pounds if Legacy to one (12) I give and bequeath unto AB the sum of he shall attain the age of vears.

if he shall attain a certain

(13) I give and bequeath unto A B of &c. my chesnut mare Bequest of pounds 3 per cent. consolidated bank annuities) apecific legacy. (or the sum of as a specific (a) legacy.

(14) I give and bequeath the sum of pounds unto the Bequest of sum Society to be applied charitable intreasurer for the time being of the for the purposes of that institution And I direct that the stitution, and

of money to direction as to receipt.

notes." These must be excepted if it is the intention they should Stuart v. M. of Bute, 11 Ves. 662. not pass.

<sup>(</sup>a) These words should always be introduced, as equity is al- Practical diways inclined to hold a legacy to be pecuniary rather than sperection-cific. Chaworth v. Beech, 4 Ves. 555. Sibley v. Perry, 7 Ves. 522. Webster v. Hale, 8 Ves. 410.

LXXVII.

PARTICULAR

DEVISES AND

HEQUESTS.

receipt of the said treasurer for the time being shall be a sufficient discharge (a) for the same to my executors.

Bequest to wife of her wearing apparel, &c.

(15) I give and bequeath unto my wife M B all her wearing apparel watches trinkets and other articles of dress and ornaments of her person.

Bequest to ex-

(15a) I also give and bequeath unto each (b) of them the said AB and CD the executors of this my will the sum of pounds as an acknowledgment for the trouble they may have in the execution of the trusts of this my will.

Legacies to

(16) I give and bequeath unto my servant AB the sum of pounds as a slight reward for his faithful conduct in my service And I give and bequeath the sum of pounds to every of the servants who shall be living with me at the time of my decease over and above the wages which may then be due to them respectively.

Bequest of pounds for mourning.

(17) I give and bequeath unto all my children and grandchildren living at the time of my decease the sum of pounds for mourning.

Bequest of debt and discharge from the same.

(18) I give and bequeath unto A B of &c. the debt or sum of pounds owing to me from him and secured by his bond and I hereby fully acquit and release him therefrom and I desire the said (executors) to deliver up the said bond to him cancelled provided there shall be without the said debt or sum a

Practical di-

(a) This direction should always be inserted, as its omission often raises a doubt in the minds of executors, and forces them to apply to a court of equity. It may be varied to "the receipt of three of the trustees of the said society."

Executors.

(b) If it is meant that the executors are to have the legacy, although they do not act under, or at least prove the will, it should be so stated. Read v. Devayaes, 3 B. C. C. 95. Dix v. Read, 1 Sim. & Stu. 237. Freeman v. Fairlee, 3 Meriv. 31.

sufficiency of my personal estate to pay and satisfy all my just debts funeral and testamentary expenses.

LXXVII PARTICITI.AR DEVIGES AND REQUIESTS.

(19) I give and bequeath unto MT all my plate and fur- Bequest of niture for her use during her life.

plate.(a) &c. to one for life.

(20) And from and after her decease I give and bequeath the and after her said plate and furniture unto my sons A B and C to be equally three sons as divided between them as tenants in common.

decease to tenants in common

(21) I give and bequeath unto A B my gold repeating watch Bequest of made by

watch.

(22) I give and bequeath unto AB my low phaeton painted green.

Bequest of

(23) I give and bequeath unto AB my [gold watch chain Bequest to inand seals to be retained by his father for his use and to be livered at a delivered to him when his said father shall think fit.

fant to be decertain time.(a)

(24) I give and bequeath unto [my dear wife] all my jewels and trinkets for her use during her life And from and after her decease I give and bequeath the said jewels and trinkets to my ter. daughter Mary B for her sole and separate use and independent of her present or any future husband.

Bequest of jewels to[wife] for life, and then to daugh-

(25) I give and bequeath my house garden and heredita- Bequest of ments [in which I have lately resided] unto my three daughters as tenants in A B and C and their respective executors administrators and assigns for and during all my estate and interest therein as tenants in common. (b)

house to three common.

(26) I give and bequeath all the books which shall be in my Bequest of

books.

(a) See the trusts of chattels as heir looms, post.

(b) The words " and not as joint tenants" are unnecessary.

Practical directions.

LXXVII.
PARTICULAR
DEVISES AND
BEQUESTS.

library at the time of my decease to A B of &c. for his absolute use and benefit.

Bequest of arrear of rent.

(27) I give and bequeath to my son Thomas the arrear of rent which shall be due at the time of my decease from my {three messuages or tenements} in street at

Bequest of various legacies.

(28) I give and bequeath to the following persons the sums hereinafter named (that is to say) to A B of &c. the sum of pounds of lawful money of Great Britain and Ireland (a) to X Y of &c. the sum of pounds of like lawful money to Mary the wife of T L of &c. the sum of pounds of like lawful money.

Currency in which legacies are payable.

(a) These words are unnecessary if the testator reside in Great Britain or Ireland, as the legacy is payable in the currency of the country in which the testator resides. Holditch v. Mist, 1 P. Wms. 696. Cockerell v. Barber, 16 Ves. 461.

LXXVIII. DIRECTIONS AS TO LEGACIES.

# LXXVIII.

#### DIRECTIONS AS TO LEGACIES.

(1) And I do hereby charge the said legacy (or legacies) or Charge of lepounds upon all and singular my real gacy or legasum (or sums) of and personal estate and effects hereinafter given devised and tate. bequeathed.

(2) And I direct that if the said legacy or any part thereof Direction that shall not be paid at the time hereinbefore appointed for the pay- carry interest. ment thereof the same shall carry and be payable with interest (a) from that time after the rate of five pounds for the one hundred by the year.

(3) And I direct that the said legacy of pounds herein- Direction that before given to the said AB shall become an interest vested in a legacy shall be vested(b) the said A B immediately upon my decease but I direct that on decease of testator. the payment thereof shall be postponed till he shall attain the age of vears.

(4) And I direct that the said legacy of pounds hereinbe- Direction that fore given to the said A B shall become an interest vested in and vested on atto be paid to her at the age of twenty-one years or marriage which taining a certain age or shall first happen But if she shall die under that age and marriage.

legacy shall be

<sup>(</sup>a) Unless the contrary is directed, interest will be payable Interest. only from a year after the testator's death. See Gibson v. Bott, 7 Ves. 96. Wood v. Penryn, 13 Ves. 325.

<sup>(</sup>b) This direction should always be inserted when the real Legacy on real estate is charged with the legacy. See Lowther v. Condon, 2 estate. Atk. 128.

LXXVIII.
DIRECTIONS AS
TO LEGACIES.

without having been married then I give and bequeath the same to

Direction that legacy shall not lapse. (5) And I direct that if the said AB shall depart this life before my decease that the said legacy of pounds hereinbefore given to him shall not lapse (a) but shall be payable to his executors administrators or assigns.

Declaration that legacy is given on the condition that legatee shall release a certain estate. (6) And I do hereby declare that the said legacy of pounds so given and bequeathed to the said X Y as aforesaid is given and bequeathed to him upon this express condition that he his executors administrators and assigns as soon as conveniently may be after my decease at the request and at the proper cost and charges of the said X Y (or A B and C D my executors hereinafter named) well and effectually release and give up all claims and demands whatsoever which he his executors administrators or assigns can shall or may have in to out of or upon my estate and effects (or the estate and effects of T L.)

Direction that [daughters] shall execute releases,

and if they shall refuse, then their interest under the will shall cease. (7) And I direct that my [two daughters A and H] before they take any benefit under this my will shall make and execute such deeds conveyances and assurances for releasing and discharging all my real and personal effects whatsoever as the said (trustees) or the survivor of them or the executors administrators and assigns of such survivor shall think proper And that if my [said daughters A and H] or either of them shall refuse to make and execute such deeds conveyances and assurances as aforesaid or shall insist upon any right title interest claim or demand upon my said estates and shall abide by such refusal or continue to make such claim for the space of calendar months after my decease then and in either of such cases all and singular the devises and bequests hereinbefore contained

Lapse.

<sup>(</sup>a) This intention should be distinctly expressed, as the courts incline against such provisions. See Corbyn v. French, 4 Ves. 418. Wilkinson v. Adam, 1 Ves. & Bea. 422. Galland v. Leonard, 1 Swanst. 161.

and all the interest therein in favour of my said [daughters A and H] or of either of them so refusing or continuing to make TO LEGACIES. such claim as aforesaid shall absolutely cease and determine and shall remain and be as if my said [daughters A and H] or such of them as shall so refuse or continue to make such claim as aforesaid had died in my lifetime without issue. (a)

DIRECTIONS AS

(8) And I hereby direct that my said executors shall pay the Direction that pounds to the said AB as soon as possibly paid directly may be (b) (or within one month after my decease) for his immediate purposes.

(9) And I hereby declare that the several legacies herein- Declaration before bequeathed by me to my said wife and children (or to the certain persons said AB) shall be paid to her and them respectively in preference shall be first to and before any of the other legacies bequeathed or which shall be hereafter bequeathed to any other person or persons.

that legacies to

(10) And I hereby direct that the said legacy hereinbefore Direction that given to the said A B shall not be taken to be in satisfaction of not be taken any sum or sums of money in which I now am or may be at the time of my decease indebted to the said A B or any part thereof.

in lieu of debt.

(10 a) I declare that the several legacies hereinbefore given Declaration to my said sons A B C and my said daughters T L F shall be shall be in taken and considered as an addition to any advancement made addition to advancement by me to my said sons or any portions given by me to my said and portions. daughters and are not to be considered in lieu thereof.

<sup>(</sup>a) This is a condition precedent, and must be complied Condition prewith before the legatee can take any benefit under the will. Acherley v. Vernon, Willes. 153.

<sup>(</sup>b) This direction will not vary the usual period for the com- Interest. mencement of the payment of interest. Webster v. Hale, 8 Ves. 410. See ante p. 171, n. (a).

LXXVIII.

DIRECTIONS AS
TO LEGACIES.

(11) And I direct that immediately after my decease an inventory shall be made of all the said {furniture and plate.}

Direction that inventory shall be made of chattels, And shall be signed by person using the chattels.

(12) And that the said A B shall sign such inventory accompanied with an undertaking for the delivery thereof by her (a) executors administrators or assigns upon or immediately after her decease to the persons or person who shall be entitled under this my will.

That two copies shall be made of schedule.

(13) And that two copies of such inventory shall be made And that the said (trustees) and the survivor of them and the executors administrators and assigns of such survivor shall keep one of the said copies and shall leave the other copy with the said A B(b) and shall procure the said A B to sign the said copy to be left with her.

Request that the husband of daughters will take particular name.

(14) And I hereby desire (c) and request that the husband of any of my daughters who shall become entitled to the receipt of the rents and profits of the said {manors messuages} hereditaments and premises hereinbefore devised should take and use the surname of only and quarter the arms of with his own family arms.

Direction that wife shall be

(15) I direct that if my wife shall desire it she shall be

Variations.

- (a) Or according to the circumstances, "the person or persons for the time being entitled under this my will to the use thereof."
- (b) Or according to the circumstances, "the person or persons for the time being entitled to the use thereof."

Practical direction. (c) If it is intended to enforce a compliance with this request, the estate should be limited over on the failure of the devisee using the name and bearing the arms. Gulliver v. Ashby. 4 Burr. 1930. Doe d. Luscombe v. Yates, 5 B. & A. 544. 1 Dow. & Ry. 187. S. C. See the proper clause, post.

allowed the use and enjoyment of my mansion house at and of the household goods and furniture in and about the TO LEGACIES. same with the appurtenances for and during the term of her allowed the life she paying for the same the yearly rent of pounds to my said executors on the usual quarterly days of payment.

LXXVIII. DIRECTIONS AS

use of house during her life, paying a certain rent.

(16) And I declare that no deduction shall be made from any legacies given by this my will or which I shall give by any codicil or codicils for the legacy (a) tax or stamp-tax or any other cause whatsoever.

Declaration that there shall be no deductions for legacy duty.

(17) And I direct that if any doubt shall arise of what passes by this last mentioned bequest the same shall be wholly regulated regulate any by the opinion of my executors.

Direction that doubt as to what passes by bequest.

<sup>(</sup>a) Since the last general stamp act there is no difference Legacy duty. as to legacy duty, whether a legacy is payable out of real or personal property. 55 Geo. III. c. 184. Sched. part 3.

LXXIX.
DEVISES AND
BEQUESTS OF
ANNUITIES.

## LXXIX.

### DEVISES AND BEQUESTS OF ANNUITIES.

Devise or bequest of annuity.

(1) I give and devise to AB of &c. and his assigns during his life the annual sum or yearly rent-charge of pounds without any deduction whatsoever for any present or future taxes whatsoever and to be paid to the said AB by four equal quarterly payments on the day of the day of the day of the first quarterly payment of the said annual sum or yearly rent-charge to be made on such of the same days as shall first happen after my decease. (a)

Charge of the same upon land.

(2) And I hereby charge the said annual sum or yearly rent on the real estates hereinafter devised.

Power of distress.

(3) And I hereby further direct that in case the said annual sum or yearly rent-charge or any part thereof shall be unpaid for the space of twenty-one days next after any of the aforesaid days of payment then and so often as the same shall happen it shall and may be lawful to and for the said A B and his assigns to enter upon all and every of the said hereditaments and premises charged with the said annual sum or yearly rent-charge as aforesaid or any part thereof and to distrain for the same or for so much thereof as shall be so in arrear and all costs and charges occasioned by the non-payment thereof and to sell such distress

Practical direction.

<sup>(</sup>a) This must be expressly mentioned. Gibson v. Bott, 7 Ves. 96.

and distresses in like manner as for rent reserved by lease or common demise And in case the said annual sum or yearly pounds or any part thereof shall be unpaid rent-charge of for the space of forty days next after any of the aforesaid days of payment then and so often as the same shall happen it shall and may be lawful to and for the said AB and his assigns during his life (although no demand shall have been made for the same) to enter upon and hold all and every the said hereditaments and premises charged with the said annual sum or yearly rent-charge as aforesaid or any part thereof and receive the rents and profits thereof for his and their own use until by means thereof or otherwise he and they shall be fully paid the arrears of the annual sum or yearly rent-charge which shall be due at the time of such entry or which shall afterwards become due during the term of his and their possession as aforesaid and all costs and charges occasioned by the non-payment thereof and such possession when taken to be without impeachment of waste. (a)

LXXIX. DEVISES AND PROTESTS OF ANNITITIES

Power of

(4) Provided always and I do hereby declare that in case the Provision that said A B shall either by sale mortgage or charge or any other shall alien the disposition in the way of anticipation alien or attempt to alien annuity, tor become bankthe said annual sum or yearly rent-charge [or (b) shall at any rupt] annuity time become bankrupt or take the benefit of any act of parliament for the relief of insolvent debtors] then and in any of the said cases the said annual sum or yearly rent-charge shall cease determine and be void and shall sink into and become part of the residue of my personal estate and effects.

shall cease.

<sup>(</sup>a) It has been lately held that a devisee of a rent-charge is Power of entitled to distrain for it without an express power. Buttery v. distress. Robinson, 3 Bing. 392. It is however imprudent to omit such a power.

<sup>(</sup>b) If this is the intention it should be expressed. See Practical di-Wilkinson v. Wilkinson, Coop. 259. 3 Swans. 515, S. C. rection. Cooper v. Wyatt, 5 Madd. 482.

LXXIX.
DEVISES AND
BEQUESTS OF
ANNUITIES

(5) I give and bequeath an annuity or yearly sum of pounds clear of all deductions unto A B of &c. for his life and I direct the same to be paid half yearly on the day of and the day of in every year.

Bequest of annuity.

Charge of several annuities upon real estate. (6) I hereby charge the said {manors &c.} hereinbefore devised with the annual sums hereinafter mentioned pounds to my cousin AB pounds to my clerk TD pounds to Mrs. L and pounds to my servant X Y if he shall be living with me at the time of my decease And I direct the said annual sums to be paid to the persons to whom they are respectively given for their respective lives by quarterly payments and the first quarterly payment thereof to be made at the expiration of three calendar months next after my decease.

Direction that annuities to females shall be for their separate use. (7) And I direct the said annual sums hereinbefore given to the female annuitants to be for their respective separate use and benefit independently and exclusively of any husband or husbands to whom they may be married and without being in any wise subject to their debts claims or demands. And that the receipts of the same annuitants notwithstanding their respective covertures be good and effectual discharges for the same. And I further declare that any sale mortgage charge or other disposition in the way of anticipation which any of the said female annuitants shall make or attempt or agree to make of their said annuities shall be absolutely void.

Declaration that if person entitled to real estates shall purchase a sufficient sum of stock to meet the annuities, charge shall cease.

(8) But I hereby declare my will and meaning to be that if my son Z Z or any other person for the time being entitled to the said {manor &c.} charged with the said annuities shall at any time purchase in the names or name of the trustees or trustee for the time being of this my will such a sum of three per cent. consolidated bank annuities as shall be sufficient to answer one or more of the said annual sums hereinbefore bequeathed and declare the trusts thereof accordingly Then and in that case the said annual sum or annual sums for which the same shall respectively be expressed to be in satisfaction shall be no longer a charge on my said real estates.

LXXX. GENERAL. DEVISES AND BROUESTS OF THE WHOLE OF TESTATOR'S PROPERTY.

## LXXX

## GENERAL DEVISES AND BEQUESTS OF THE WHOLE OF TESTATOR'S PROPERTY.

(1) I give devise and bequeath unto A B of &c. and General devise C D of &c. their heirs executors administrators and assigns copyhold, and all my freehold copyhold and leasehold manors messuages leasehold estates to trus-[advowsons] farms lands tenements and hereditaments what- tees upon the soever and wheresoever in possession reversion (a) remainder or after declared. expectancy (b) with the rights members and appurtenances To hold the said manors messuages [advowsons] farms lands tenements and hereditaments unto the said (trustees) their heirs executors administrators and assigns according to the tenure and nature of the premises respectively Upon and for the trusts intents and purposes and with under and subject to the powers provisoes and declarations hereinafter mentioned [ (that is to sav) ]

(2) I give and bequeath all the leasehold {messuages or Bequest of tenements} and premises of or to which I or any person or trustees.

particular

messuage,

<sup>(</sup>a) Estates in reversion will pass under a general devise with- Reversion. out being named therein. Chester v. Chester, 3 P. Wms. 55. Pain v. Ridout, 1 Atk. 186.

<sup>(</sup>b) If so, " save and except a certain messuage or tenement situate at Exception of

in the county of

<sup>&</sup>quot; save and except the estates vested in me upon any trust or of trust and mortgage trust whatsoever or by way of mortgage." estates,

<sup>&</sup>quot; save and except the lands included in the settlement made on of settled promy marriage with my present wife." perty.

LXXX. GENERAL DEVISES AND BEQUESTS OF THE WHOLE OF TESTATOR'S PROPERTY. persons in trust for me am are or at any time of my life shall be possessed or entitled in possession remainder or expectancy with their appurtenances (except such leasehold estates as may be vested in me upon trust or by way of mortgage) unto the said AB and CD their executors administrators and assigns for and during all such estate term and interest as I shall or may have therein at the time (a) of my decease.

Devise and bequest of real and personal estate to trustees in trust.

(3) I give devise and bequeath all and singular my manors messuages tenements lands hereditaments and real estate in possession remainder reversion or expectancy or which in exercise of any special power I am authorised to appoint by this my will with their appurtenances And also all and singular my personal estate and effects whatsoever and wheresoever (save and except my said [chestnut horse] hereinbefore specifically bequeathed) unto A B and C D their heirs executors administrators and assigns according to the nature and quality thereof respectively for their own absolute use and benefit but nevertheless In trust

General devise of real estate to uses. (4) I give and devise all that my manor messuages lands and hereditaments situate at in the county of and all other my freehold and copyhold messuages lands and hereditaments whatsoever and wheresoever with their and every of their appurtenances To and for the uses intents and purposes and subject to the powers provisoes and declarations hereinafter declared concerning the same.

General bequest of personal estate(b) to trustees.

(5) I hereby give and bequeath unto A B of and C D of their executors administrators and assigns All my furniture chattels goods plate linen china books [stock in trade] wines and other liquors debts sum and sums of money due and owing

Practical directions.

<sup>(</sup>a) These words should always be inserted in bequests of leaseholds. See Abney v. Miller, 2 Atk. 598.

<sup>(</sup>b) Personal estate may be bequeathed by either of these forms, and the shorter seems the more preferable.

to me at the time of my death either upon mortgage bond government or other securities of what nature or kind soever and all other my personal estate (a) whatsoever and of what kind or nature soever not herein-[before] specifically bequeathed.

LXXX. GENERAL DEVISES AND BEQUESTS OF THE WHOLE OF TESTATOP'S PROPERTY.

(6) I hereby give and bequeath unto A B and C D their exe- General becutors administrators and assigns all my personal estate whatever and of what nature or kind soever.

quest of personal estate(b) to trustees.

(7) I give and bequeath all and every my leasehold estates Bequest of lands and tenements and all my goods chattels stock in trade money and securities for money and all other my personal estate and effects whatsoever unto AB of &c. and CD of &c. their executors administrators and assigns upon the trusts and for the intents and purposes hereinafter expressed.

leasebold and other personal estate upon trusts bereinafter mentioned.

(8) To the same uses upon the same trusts and subject to the To the same same powers provisoes and declarations as are hereinbefore declared concerning the said [freehold] estates hereinbefore devised or as near thereto as the difference of the tenure and other circumstances will permit but so that the said leasehold estates shall not for the purpose of transmission vest in any tenant in tail who shall not attain the age of twenty-one years.

uses and trusts of the free-

<sup>(</sup>a) The word "property" is here sometimes improperly in- "Property." serted. It is a word of the most comprehensive meaning, passing both real and personal estate, and it should therefore never be used as a general word applicable to personal estate alone. See Doe dem. Andrew v. Lainchbury, 11 East 290. Doe dem. Bunny v. Rout, 7 Taunt. 79.

<sup>(</sup>b) See p. 180 n (b)

LXXXI. EXERCISE OF POWERS.

## LXXXI.

### EXERCISE OF POWERS.

Exercise of power over realty or personalty.

(1) Now (a) therefore pursuant to and by force and virtue and in exercise and execution of the power or authority to me for this purpose given by the (b) said hereinbefore recited indenture and of every other power or authority in any wise enabling me in this behalf I the said A B do by this my last will and testament in writing by me signed and published in the presence of and attested by the three credible witnesses whose names are hereunder written as witnesses hereto direct {limit} (c) and appoint that

Subject to an estate for life.

(2) subject to the estate of the said AB therein for his life

That lands shall be to the use.

(3) All and every the said {manors} and hereditaments with their appurtenances shall go remain and be To the use

That monies shall be upon trust,

(4) the said trust monies stocks funds and securities shall remain and be to AB and CD their executors administrators and assigns Upon trust

Further exercise of power. (a) If there is a further exercise of the power, the only alteration will be,

" And pursuant to" &c. and " the said power."

Variation.

(b) If the indenture giving the power has not been recited as ante 160, (9) (10) say,

" by an indenture bearing date on or about the day of

and made between" &c.

Practical direction. (c) In appointments of personal estate, the word "limit" is omitted.

(5) if I shall depart this life in the lifetime of my said husband A B

LXXXI. EXERCISE OF POWERS.

(6) the said (trustees) their heirs and assigns shall stand seised of the said {manors} and hereditaments with the appurtenances upon the trusts hereinafter expressed and declared (that is to say)

if testatrix shall die in life-time of husband. that trustees shall stand seised to certain trusts.

(7) the said {manors} and hereditaments shall be charged Chargeof sums And I do hereby charge the same with the payment of all such any codicil. sums of money whether annual or in gross and at such times and with such provisions as I shall give or direct by any codicil to this my last will and testament or by any testamentary paper signed by me with my name and whether the same shall be witnessed or not.

(8) to the uses upon and for the trusts intents and purposes To the uses hereinafter declared (that is to say)

and upon the trusts following.

LXXXII.
BEQUEST OF
MONIES TO
ARISE PROM
PARTICULAR
PUNDS.

### LXXXII

### BEQUEST OF MONIES TO ARISE FROM PARTICULAR FUNDS.

Bequest of

(1) I hereby give the sum of pounds unto AB and CD their executors administrators and assigns upon the trusts hereinafter mentioned.

Bequest of stock to trustees.

(2) I do hereby give and bequeath the [said] (a) sum of pounds three per cent. consolidated bank annuities unto A B of &c. and C D of &c. their executors administrators and assigns upon the trusts hereinafter declared (that is to say)

Bequest of monies to arise from sale.

(3) I do hereby give and bequeath all such monies as shall arise from the sale of the said {hereditaments} and premises to A B of &c. and C D of &c. their executors administrators and assigns

Bequest of money to arise on contingency.

(4) I do hereby give and bequeath the sum of pounds to which I shall become entitled in the event [of my surviving my dear wife]

Bequest of money assured by policy.(b)

(5) I give and bequeath all and every the sum and sums of money which may become payable at my decease by virtue of a certain policy of assurance effected by me in the office unto the said A B of &c. and C D of &c. their executors administrators and assigns Upon trust

Practical direction. (a) There may be a recital of possession of a sum of stock as ante 159, (5) (6), but if there be no recital omit the word "said."

Practical direction.

<sup>(</sup>b) The policy may be thus alluded to, or may be recited as in LXXIV. 1.; and trusts declared of the money thereby secured.

LXXXIII. DECLARATIONS OF USES OF REAL ESTATE.

## LXXXIII.

### DECLARATIONS OF USES OF REAL ESTATE.

(1) I give and devise all that {messuage or tenement} here- Devise of ditaments and premises situate and being in the parish of with their appurtenances To the uses following (a) (that is to say) (for general devises of real estate, see ante LXXX.)

lands to uses.

(2) To the use of A B and C D their executors administra- To the use of tors and assigns for and during the term of computed from [the day of my decease (b)] and thenceforth next tain trusts. ensuing and to be fully complete and ended without impeachment of waste But nevertheless upon the trusts and subject to the provisces hereinafter declared and contained concerning the same.

years to be trustees for a term upon cer-

(3) And immediately after the expiration or sooner determi- And after the years and in the mean time term. nation of the said term of subject thereto and to the trusts thereof

(4) And subject thereto

And subject thereto.

(5) To the use of [my said son Thomas B] his heirs and as- To the use of signs for ever.

(6) To the use of my own right heirs for ever.

To the use of testator's heirs.

(a) It is more prudent to devise the estates to the devisees at Practical dionce, and not through the medium of a devisee to uses. See rection. Sugd. Pow. 139, 4th ed.

(b) Or it may be, according to the circumstances. "from the day of the decease of the said and such failure of issue of his body as hereinbefore is mentioned."

Variation.

LXXXIII.
DECLARATIONS
OF USES OF
REAL ESTATS.

To the use that wife shall receive an annuity [in bar of dower and jointure.]

(7) To the use and intent that my wife (in case she shall survive me) and her assigns may yearly receive and take during her life [so long as she shall continue my widow] an annual sum or vearly rent charge of pounds of lawful money of Great Britain and Ireland clear of all deductions whatsoever and to be issuing out of the said {manors messuages} hereditaments and premises hereinbefore devised and to be paid by four equal quarterly payments (that is to say) on the twenty-fifth day of March the twenty-fourth day of June the twenty-ninth day of September and the twenty-fifth day of December in every year the first quarterly payment thereof to be made on such of the said days as shall first happen after my decease [and I direct that such annual sum or yearly rent-charge shall be in full of the jointure of my said wife and in bar (a) of all her dower and And I hereby give (b) to my said wife and her assigns thirds such powers of entry and distress and sale upon the said {manors messuages} and premises for recovering the said annual sum or vearly rent charge of pounds if the same or any part thereof shall be in arrear for the space of twenty-one days next after any of the said quarterly days of payment as are usually given to landlords for recovering rents reserved by lease or on common demise.

With power of distress.

To A B for life.

(8) To the use of A B and his assigns during his life without peachment of waste.

To trustees to preserve contingent remainders. (9) And immediately after the determination of that estate by forfeiture or otherwise in his lifetime To the use of the said (trustees) their heirs and assigns during the life (c) of the said

Practical directions. (a) This must be expressed if according to the intention.

(b) If the annuity be large, full powers of distress and entry should be inserted. See ante LXXIX. (3)

<sup>(</sup>c) In 2 Bla. Com. 173, and repeated in a modern work 7 Barton's Prec. 720, 3d edit. it is said that this limitation is unnecessary in a will. This opinion, however, is incorrect. See Archer's case, 1 Rep. 66. Carter v. Barnardiston, 1 P. W. 505, 2 Bro. P. C. 1. Fearn. Cont. R. 326.

A B in trust for him the said A B and by the usual way to preserve the contingent remainders hereinafter limited from being defeated.

LXXXIII. DECILARATIONS OF USES OF REAL ESTATE.

(10) And immediately after the decease of the said A.B.

And after AB's decesse.

(11) To the use of all and every such one or more exclusively to the use of of the others or other of (a) the children [or grand children] of such children of AB as AB the said AB for such estate in such shares if more than one shall appoint. charged with such annual or other sums of money for their or any of their benefit and with such remainders or limitations over between or among them or any of them and in such manner as the said AB (b) shall by deed or will direct or appoint.

(12) And in default of such direction or appointment and And in deso far as any such direction or appointment if incomplete will not extend

(13) To the use of (c) all and every the children of the said to all the AB now born or hereafter to be born who being a son or sons tenants in

(a) Or it may be "my children," or "the children of my body," as the case may be, and the alteration must of course be continued throughout.

Variations.

(b) If the donee of the power is a woman, insert "as the said A B whether married or single shall &c."

(c) It may be useful here to state the principal rule as to Rules as to devises and bequests to children. Where the children are to gifts to chiltake immediately, all the children living at the testator's death, and those only, will take. Heath v. Heath, 2 Atk. 121. v. Harwood, 5 Madd. 332. And it will be the same whether they be the children of a dead or living person. Hughes v. Hughes, 3 B. C. C. 352. Davidson v. Dallas, 14 Ves. 576. Viner v. Francis, 2 Cox, 190. But where the children are to take in remainder, or after the determination of a particular estate or interest, then all the children will take who shall have come into existence at the period of distribution. Mogg v. Mogg, Where there 1 Mer. 654. Leake v. Robinson, 2 Mer. 363. is an immediate gift to children on the death of the testator. and there is at that time no child in esse, the property will go to all the children who shall subsequently come into existence.

LXXXIII.

DECLARATIONS

OF USES OF

REAL ESTATE-

common in tail, with cross remainders. shall attain the age of twenty-one years or die under that age leaving issue of his or their body or being a daughter or daughters shall attain that age or marry under that age with the consent of her or their guardian or guardians for the time being to be equally divided between or amongst them if more than one as tenants in common in tail with cross remainders between them in tail.

And in default of issue,

(14) And in default of such issue

to heirs of the body of A B.

(15) To the use of the heirs of the body of AB.

To A B in fee if he shall attain twentyone years or (16) To the use of AB (a) of &c. [his] (b) heirs and assigns for ever but if [he] shall depart this life before [he] shall attain the age of twenty-one years and without leaving issue [him] sur-

Weld v. Bradbury, 2 Vern. 705. Shepherd v. Ingram, Amb. 448. When the gift is to children "to be born," if the gift be immediate, all the children will take who afterwards come into existence. Mogg v. Mogg, ubi supra. But if the gift is in futuro to the children "to be born," as for example, in Whitbread v. St. John, 10 Ves. 152, where there was a bequest unto the child and children of A, born and to be born, as many as there might be, when and as they should attain twenty-one years, or be married with consent, the gift was held to be confined to those living when the first share was vested in possession. A child in ventre is considered as a child in esse, and will be entitled accordingly. Doe v. Clark, 2 H. B. 379. And will even take under a gift to children born. Trower v. Butts, 1 Sim, and Stu. 181.

As to whether grandchildren will ever take under a devise to children, see 2 Jarm. Powell on Dev. 298; where the subject is discussed by the editor with ability and clearness.

(a) It has very lately been decided that a devise to the first son of A who shall attain twenty-one years, is an immediate devise, with a condition subsequent. Duffield v. Elwes, 2 Sim. and Stu. 544. 3 B. and C. 705.

Variation for female devisces, &c. (b) All these limitations will equally serve for female devisees with the alteration of the gender, and the changing the word "sons" or "nephews," &c. for "daughters" or "nieces," &c. or "sons of the said A B."

viving then I give and devise the said {messuages} and hereditaments to the use of CD his heirs and assigns for ever.

LYYYIII DECLAR ATIONS OF USES OF REAL ESTATE.

(17) To the use of his [third] and every subsequently born sons and his respective heirs and assigns for ever severally and in fee, successively according to his respective seniority But subject in To third or respect of every of his said [third] and subsequently born fee, but subject sons to the like executory devise for determining the estate tory devise, as hereby limited to him his heirs and assigns and for vesting the same in his next son his heirs and assigns as is hereinbefore ex- and second pressed in respect to his said first and second sons respectively.

have issue, but if not, to C D other sons in expressed in respect to first sons.

. (18) To the use of the said A B his heirs and assigns for ever To A B in fee. but if the said A B shall have no son who shall attain the age of twenty-one years then after his decease and such failure of issue as aforesaid to the use

but if he shall have no son who attains twenty-one

(19) And after the decease of the said A B to the use of the After decease first and every other son of [his] (a) body severally and successively according to their respective seniorities in tail [male]. (b)

of A B, to his sons successively in tale [male.]

(20) And in default of such issue To the use of his second And in default and every other of his [sons] (a) and [his] assigns severally and successively according to his respective seniority during [his] other [sons] life without impeachment of waste.

of issue, to second and successively for life.

(21) And after [his] respective decease to the use of his re- And after their spective first and every other son of [his] body severally and successively according to [his] respective seniority in tail male and so that the eldest and elder of my said sons and their said

cease, to their sons successively in tail.

female devisees. &c.

different estates tail.

<sup>(</sup>a) All these limitations will equally serve for female devisees variation for with the alteration of the gender, and the changing of the word "sons" or "nephews," &c. for "daughters" or "nieces," &c. or sons of the said A B."

<sup>(</sup>b) If tail female, alter the word "male" to "female;" if tail Variation for general, omit the word "male."

LXXXIII.
DECLARATIONS
OF USES OF
REAL ESTATE.

sons respectively shall take before and be preferred to the youngest and younger respectively.

To daughters as tenants in common in tail.

(22) To the use of Anne and Mary and every other of the daughters of the said A B hereafter to be born and to be divided between or among them as tenants in common in tail with cross remainders between or among them in tail and if all the daughters of the said A B shall die without issue save one to the use of that one or only daughter.

To the use of trustee for ninety-nine years upon the same trusts, for the benefit of one [daughter] and her issue, as are declared before in favour of another.

(23) To the use of A B his executors administrators and assigns for the term of ninety-nine years to be computed from [the cease of the said M and such failure of the issue of her body as hereinbefore is mentioned] and thenceforth next ensuing if his daughter E. shall so long live upon the like trusts for the separate use and benefit of the said E and subject thereto with the like remainders and limitations over To the use and for the benefit of the said E and her issue and for preserving contingent remainders.

As to one moiety of premises to uses, and as to the other moiety to uses, (24) As to one moiety of the said {manors messuages} hereditaments and premises to the use &c. And as to the other moiety of the said {manors messuages} hereditaments and premises to the use &c.

To the same uses and trusts as are declared of freeholds. (25) To the same uses upon the same trusts and subject to the same powers provisoes and declarations as are hereinbefore declared concerning the said [freehold] estates hereinbefore devised or as near thereto as the difference of the tenure and other circumstances will permit.

As to one estate to uses, &c.

(26) And as to my manors and messuages called H in the county of T to the use or upon trust &c.

As to another to uses, &c.

(27) And as to my messuage &c. called T in the counties of L and B to the use or upon trust &c.

General appointment to (28) And to preserve the contingent remainders hereinbefore

devised from being destroyed I direct limit and appoint the said {manors &c.} and premises hereinbefore limited and appointed to the use of any person during his or her life and after the determination of that estate by forfeiture or otherwise in his or her trustees to prerespective lifetime To the use of the said (trustees) and their heirs during the life of the tenant for life whose estate shall so determine in trust for him or her and by the usual ways and means to preserve the contingent remainders expectant or depending thereon.

LXXXIII. DECLARATIONS OP TISES OF REAL ESTATEL

serve contingent remainders depending on preceeding

(29) And to preserve the contingent remainders hereinbefore Devise to devised from being destroyed I devise the hereditaments hereinbefore devised to any person during the term of his life with their appurtenances after the determination of that estate by forfeiture or otherwise in his respective lifetime unto and to the use of (trustees) and their heirs during the life of the tenants for life whose estate shall so determine In trust for him and by the usual ways to preserve the contingent remainders expectant or depending thereupon.

preserve the contingent remainders.

(30) To such uses (a) upon such trusts and for such estate To such uses or estates intents and purposes as AB shall by any deed or appoint, and deeds writing or writings to be by him sealed and delivered in the presence and attested by two or more credible witnesses direct or appoint and in default of such direction or appointment and so far as any such direction or appointment shall not extend To the use of the said A B and his assigns during his life with- to devisee for out impeachment of waste and after the determination of that estate by any means in his lifetime To the use of (trustee) his ex- To trustee for ecutors and administrators during the life of the said AB in for devisee, trust for him and assigns to the end and intent that neither the present nor any future wife of the said A B may become entitled to dower out of or in the said premises or any part thereof and after the determination of the estate hereinbefore limited to the said (trustee) and his executors and administrators To the use of him the said AB his heirs and assigns for ever.

in default,

life in trust

To devisee in fee (uses to bar dower.)

<sup>(</sup>a) See a fuller form, Vol. I. p. 62.

LXXXIV.

COMMENCEMENTS OF
DECLARATIONS
OF TRUST.

### LXXXIV.

### COMMENCEMENTS OF DECLARATIONS OF TRUST.

Commencements of declaration of trusts of real

(1) And I hereby declare that the said real estate which is devised to the said (trustees) their heirs and assigns as aforesaid is so given and devised to them the said (trustees) their heirs and assigns upon and for the trusts intents and purposes and with under and subject to the powers provisoes and declarations hereinafter expressed (that is to say)

Commencement of declaration of trusts of real and personal estate.

(2) And I hereby declare that my said real and personal estates hereinbefore devised and bequeathed to the said (trustees) their heirs executors and administrators respectively as aforesaid are so given devised and bequeathed to them the said (trustees) their heirs executors and administrators upon and for the trusts intents and purposes and with under and subject to the powers provisoes and declarations hereinafter expressed (that is to say)

Commencement of declaration of trusts of term.

(3) And I do hereby declare that the said {manors messuages} hereditaments and premises are hereinbefore devised to the use of the said (trustees) their executors administrators and assigns for the term of hundred years as aforesaid upon the trusts intents and purposes hereinafter expressed and declared of and concerning the same (that is to say)

Declaration that monies to arise from sales, shall be upon same trusts as residuary estate.

(4) And I declare that the (a) monies which shall arise from the sale of the said {messuages or tenements} hereditaments and premises hereinbefore devised shall be held and applied upon the same trusts and in the same manner in every respect as hereinafter is mentioned with respect to the monies which shall arise from my residuary estate and effects hereinafter bequeathed.

LXXXIV. COMMENCE. MENTS OF DECLARATIONS OF TRUST.

(5) I do hereby declare that the said (trustees) and the survivor of them and the executors administrators and assigns of such survivor shall stand and be possessed of and interested in the said trust monies (a) stocks funds and securities and the interest dividends and annual produce thereof upon and for the trusts lands, &c. intents and purposes and under and subject to the powers provisoes agreements and declarations hereinafter expressed and declared of and concerning the same (that is to say)

Commencement of declaration of trusts of personalty. or the proceeds of sale of

(6) And in the settlement so to be made as aforesaid it shall Declaration of be declared that the said estates are limited to the said (trustees) to be inserted their executors administrators and assigns for the said term of years in trust.

(a) Or it may be, "interested in such part of my said personal estate as shall con- Personal sist in money."

Or, " all the residue of my personal estate whatsoever."

Residue of personalty.

"the monies to arise from the sale of the said premises."

Monies arising from sale.

"the monies to arise from that part of my personal estate which I have directed to be converted into money.

Monies to arise from sale of personal estate.

Or if real or leasehold estates be devised to trustees to sell. " of and in the rents issues and profits thereof until the same shall be sold,"

Rents.

Or it may be all of these, thus, "the monies &c. And also the monies," &c.

All of these.

LXXXV.
TRUSTS FOR
THE PAYMENT
OF DEBTS
AND LEGACIES,
AND BY REPERENCE, &c.

### LXXXV.

# TRUSTS FOR THE PAYMENT OF DEBTS AND LEGACIES, AND BY REFERENCE. &c.

Trust to raise sufficient to pay debts out of real estate.

(1) Upon trust that if there shall be a deficiency of my personal estate for the payment of my debts [and legacies] they the said (trustees) or the survivor of them or the heirs executors administrators or assigns of such survivor do and shall by sale or mortgage demise or other disposition of the said {messuages} hereditaments and premises (a) or a competent part or parts thereof (b) or by with and out of the rents issues and profits to arise therefrom in the mean time or by all or any of the said means or by such other ways and means as to them or him shall seem meet raise and levy such sum or sums of money as shall be sufficient to make good such deficiency (receipt clause as in CLXII) And I do hereby authorize the said (trustees) and the survivor of them and the heirs executors administrators and assigns of such survivor to raise such sum or sums of money as they or he may think proper by the ways and means aforesaid though my. personal estate and effects shall not have been actually got in and applied for the purposes of this my will.

although the personal estate is not got in.

And apply the money in payment of debts, &c.

(2) And do and shall apply the money to be so raised in payment and satisfaction of such debts funeral and testamentary expenses and legacies accordingly.

Term.

Term:

<sup>(</sup>a) If the hereditaments are limited to the trustees for a term, say,

<sup>&</sup>quot;hereditaments and premises comprised in the said term of years."

<sup>(</sup>b) If limited for a term, say, "thereof for the whole or any part of the said term of years."

(3) Upon trust that they the said (trustees) and the survivor of them and the executors administrators and assigns of such survivor do and shall as soon as conveniently may be after my decease by with and out of the same pay and satisfy all the debts which I shall justly owe at the time of my decease and my funeral expenses and the costs and charges of proving and establishing this my will and the carrying the same into execution [and the several legacies given by this my will or which I shall give by any codicil to this my will.

LXXXV. TOTICTE POD THE PAYMENT OF DERTS AND LEGACIES, AND BY RE-PERENCE. &c.

Trust to pay debts [and legacies] generally.

(4) Upon trust to retain repay and reimburse themselves and Trust to pay himself all costs charges and expenses which they or he shall incurred in pay sustain or be put unto in or about the execution of all or trusts. any of the trusts or powers hereby reposed in them or him.

execution of

(5) Upon and for the same trusts intents and purposes as are Upon same hereinafter declared of and concerning the residue of my property.

(6) Upon the same trusts intents and purposes as are herein- Upon same after expressed of the other moiety or equal half part of the moiety. said stocks funds and securities or as near thereto as the circumstances of the case will admit.

(7) Upon and for the same trusts intents and purposes as are Upon same herein [before] expressed and declared of and concerning the nies to arise monies arising from the sale of the said {messuages} and hereditaments.

trusts as mo-

(8) Upon such and the same trusts and subject to such and Upon the same the same powers and provisoes as are hereinbefore expressed and declared of and concerning the said freehold and copyhold messuages and tenements hereinbefore devised.

trusts as are declared of freeholds.

(9) In trust in the first place for further and better securing Trust for seby the usual ways and means the said annual sum of to the said AB.

pounds curing annui-

LXXXVI.
DECLARATIONS
OF PARTICULAR TRUSTS
OF REAL
ESTATE.

### LXXXVI.

### DECLARATIONS OF PARTICULAR TRUSTS OF REAL ESTATE.

Trust to sell real estate (for another form of trust for sale, see vol. I. p. 66. (5.))

(1) Upon trust with all (a) convenient speed after my decease absolutely to sell the said {messuage hereditaments} and premises hereinbefore devised [and bequeathed] either together or in parcels and either by public auction or private contract and for such price and prices as to them or him shall seem fit and reasonable with liberty for them or him to buy in and resell the same at some future auction and to convey and assure the same unto the purchaser or purchasers thereof or as he or they shall direct and to receive the monies arising from the sale or sales thereof and give effectual discharges for the same and exonerate the said purchaser or purchasers from all liability in respect of the application thereof.

Direction as to profits in the mean time. (b)

(2) And I direct that until such sale or sales the rents and profits of the said hereditaments and premises or of such part thereof as shall from time to time remain unsold shall be paid unto the person or persons who under the trusts hereinafter contained would be entitled to the interest and dividends of the monies to arise from the said sale.

Variation.

(a) Or it may be thus,

"Upon trust that they the said (trustees) or the survivor of them or the heirs or assigns of such survivor do and shall at such time or times as they or he shall think expedient and most for the benefit of the persons interested under this my will, absolutely sell," &c.

Practical direction. (b) This provision is unnecessary, as it is now held that the persons entitled to the interest and dividends, will also be entitled to the rents and profits, although there even appears a contrary intention in the will. Noel v. Lord Henley, 7 Pri. 241. Sitwell v. Bernard, 6 Ves. 520.

- (3) Upon trust for A B for his life and from and after his decease
- (4) Then as to the premises hereby limited to him for life and from and after my decease then as to all the other messuages hereditaments and premises in trust
- (5) Upon trust that they the said (trustees) and the survivor of them his heirs and assigns do and shall pay the rents and profits of the said {messuages &c.} unto or permit the same to be received by AB and his assigns during his life and immediately from and after his decease do and shall stand and be seised of after his dethe said {messuage &c.} In trust for the first and other sons of seised of prehim the said A B severally and successively according to their respective seniorities in tail male And in default of such issue

LYYYVI DECLARATIONS OF PARTICULA LAR TRIESTS OF REAL ESTATE.

Upon trust for A B for life and after his decease as to those premises, and after my decease as to all the others. Trust to pay rents to A B for life, and cease to stand mises for his first and other sons in tail.

(6) Do and shall stand possessed of and interested in the Trust for the said {houses &c.} In trust for such son of the said AB as shall benefit of the first son of AB first or alone attain the age of twenty-one years and the heirs who shall atand assigns of such son But in case there shall be no son of one. the said AB who shall attain the age of twenty-one years In trust

tain twenty-

(7) Upon trust that they the said A B and C D and the sur- Trust to convivor of them his heirs and assigns do and shall by such conveyances and assurances in the law and in such manner as they or he shall think fit and as counsel shall advise convey and settle the said manors and hereditaments so and in such manner as that the same so far as the rules of law and equity and the circumstances of the case will admit and as will be consistent with the general purport and meaning of this my will may go remain and be To the uses upon and for the trusts intents and purposes hereinafter expressed (that is to say)

vey and settle certain uses.

(8) In trust out of the rents and profits of the said {manors Trust to pay &c.} and premises to pay all taxes rates and other out-goings payable and to be paid for or in respect of my said real estate during the estate of the said (trustees.)

the taxes, &c.

LXXXVI.
DECLARATIONS
OF PARTICULAR TRUSTS
OF REAL
ESTATES.

Trust to repair house.
To pay wages of stewards,

Trust to pay rents and profits of real or leasehold estates to [married woman.] (a)

- (9) And also the expense of repairing and keeping in repair my mansion house at and my houses at
- (10) And also the wages and salaries of receivers stewards and bailiffs to be from time to time employed by my said (trustees) or the survivor of them his heirs and assigns in or about the execution of the trusts hereinbefore declared.
- (11) In trust that they the said (trustees) or the survivor of them and the {heirs} and assigns of the said survivor do and shall during the life (b) of the said Mary B receive the yearly rents issues and profits of the said {messuages} and hereditaments and pay the same into the hands of the said Mary B or (c) to such person or persons as she [whether covert or sole] shall by any writing under her hand and seal from time to time appoint to the intent that the same may be for her separate use  $\lceil (a) \rceil$  and not subject to the debts controul or interference of her present or any future husband] but so that she shall have no power to anticipate the growing payments And the receipt or receipts of the said Mary B for the said yearly rents issues and profits or of the persons or person she shall appoint to receive the same shall [whether she shall be covert or sole] be an effectual discharge or effectual discharges for the money therein acknowledged to be received And after the decease of the said Mary B

Upon trust for separate use of woman by reference to former trust.

(12) In trust for the sole and separate use of Sarah B of &c. during her life in such and the same manner and with as full

Practical direction.

Variations for more than one.

(a) The form will be precisely the same for any other person with the alteration of the gender, and the omission of the parts in brackets peculiarly applicable to a married woman.

(b) If more than one are to enjoy the benefit of the trust,

say,
"During the lives and life of the said A B C D and E F and the survivor of them."

(c) If more than one, say,

"ABCD and EF or to such person or persons as they shall whether covert or sole &c. respectively appoint," and alter "she" into "they" throughout.

and ample powers to her of appointment and giving receipts as is and are hereinbefore declared and contained in favour of the said M B during her life of and concerning the rents issues and profits of the said {messuage &c.}

LXXXVI. **DECLARATIONS** OF PARTICULA LAR TRUSTS OF BEAL ESTATE,

(13) And I do hereby further declare that the said {manors} hereditaments and premises are hereinbefore limited to the said (trustees) their executors administrators and assigns for the said timber, years Upon trust that the said (trustees) and the term of survivor of them and the executors administrators and assigns of such survivor do and shall from time to time when and as they or he shall think proper enter into and upon the said {messuages} and hereditaments hereinbefore devised and fell and cut down or cause to be felled and cut down all and every such timber trees pollards and other trees as shall be at their full growth and height of improvement or in a state of decay or which ought to be felled and cut down for the improvement of other timber and trees and do and shall sell and dispose of the same unto any and sell the person or persons who shall be willing to purchase the same for such price or prices as can be reasonably had and gotten for the same And do and shall apply the monies to arise from the and apply the sale thereof in or towards satisfaction and discharge of the in- monies in paying charges on cumbrances which at the time of my decease shall or may affect the estates, the said {messuages} and hereditaments hereinbefore devised and of the principal sums (if any) which shall then affect the said hereditaments by virtue of any charge made thereon by this my will or to be made thereon in pursuance of any of the powers contained in this my will And do and shall apply and dispose of and apply rethe residue of the said monies upon such trusts as are hereinafter same trusts as declared of the residue of my personal estate.

Trusts of term to authorise trustees to cut

monies in pay-

are declared of the residue.

(14) Upon trust that they the said (trustees) and the survivor Trust to pay of them his executors and administrators do and shall by with and out of the rents and profits of the said {messuages &c.} raise and pay yearly and every year the annual sum of of lawful money of Great Britain and Ireland without any deduction or abatement whatsoever to A B of &c. for and during

annuity to AB.

LXXXVI.
DECLARATIONS
OF PARTICULAR TRUSTS
OF REAL
ESTATE.

his life by four equal quarterly payments on the day of the day of the day of and the day of the first quarterly payment of the said annual sum to be made on such of the said days as shall first happen after my decease.

Direction that in settlement proper estates shall be limited to trustees to preserve. (15) And I do hereby direct that in the said settlement shall be limited or inserted proper estates in remainder to trustees for the purpose of preserving contingent remainders in the usual manner.

Trust of term of years for further securing an annuity.

(16) And as to all the said {messuages} hereditaments and premises comprised in the said term of 500] years upon trust that if the said annual sum or yearly rent-charge shall be in arrear for the space of forty days next after any of the days hereinbefore appointed for the payment thereof then and so often as the same shall happen the said (trustees) and the survivor of them and the executors or administrators of such survivor do and shall out of the said rents and profits of the said {messuages} hereditaments and premises or by sale or mortgage of the said {messuages} hereditaments and premises or a competent part thereof for the whole or any part of the said term of [500] years or by any other ways and means which they or he shall think proper levy and raise the said annual sum or yearly rent-charge or so much thereof as shall be so in arrear and all expenses which the said A B his executors administrators or assigns or the said (trustees) or the survivor of them or the executors administrators and assigns of such survivor shall sustain or be put unto by reason of the nonpayment thereof or otherwise in the execution of the said trusts.

Declaration that subject to the term remainder-man shall receive the rents. (17) Provided always and I hereby declare that the said (trustees) and the survivor of them and the executors administrators and assigns of such survivor do and shall (subject to the trusts aforesaid) from time to time permit the rents and profits of the said {messuages} and premises or so much of the said rents and profits as shall remain after answering the trusts aforesaid to be received by the person or persons who for the time being shall be entitled to the said {messuages} and hereditaments in

remainder immediately expectant upon the determination of the said term.

LXXXVI. DECLARATIONS OF PARTICU-LAR TRUSTS OF REAL AND ESTATE.

cesser of term.

(18) Provided always and I hereby declare that when all the trusts hereinbefore declared of the said term of vears shall Provise for have been performed or satisfied or become unnecessary or incapable of taking effect and all the costs and charges incurred by the said (trustees) and each and every of them and the executors administrators and assigns in the execution of the said trusts shall have been paid (and which costs I do hereby authorize and empower them and him to raise by all or any of the means aforesaid and to retain) then the said term of years of and in the said {messuages} hereditaments and premises therein comprised or so much thereof as shall not have been sold or mortgaged for the purposes aforesaid shall cease determine and be void.

LXXXVII.
TRUSTS OF

### LXXXVII.

### TRUSTS OF MINES.

Trust to work mines and sell produce,

and stand possessed of profits upon certain trusts Powers to do all acts necessary for working mines,

and to mortgage premises to carry on the work.

Upon trust that the said A B and C D and the survivor of them and the executors administrators and assigns of such survivor do and shall as soon as may be after my decease raise and work all the iron ore coal and other minerals which are in or under the said hereditaments and real estate or any part thereof and sell and dispose thereof at the best price or prices that can be obtained for the same And do and shall stand possessed of the monies to arise or arising therefrom upon the trusts hereinafter declared And I do hereby declare that it shall be lawful for the said A B and C D and the survivor of them and the executors administrators and assigns of such survivor for the purposes aforesaid to bore sink erect and set up in or upon the said lands and premises or any part thereof all such pits shafts engines machines railways and other things as to them or him shall seem meet necessary or expedient and to hire and employ such miners engineers clerks and workmen as to them or him shall seem fit And also by demising or mortgaging the said hereditaments and real estate comprised in the said term of [500] years or any part thereof for all or any part of the said term to levy and raise all such sum and sums of money as shall from time to time appear to them or him to be wanted for the purpose of raising and working the said minerals and otherwise carrying the trusts hereby created into execution.

LXXXVIII. TODIETE AP AN ADVOWSON

## LXXXVIII.

#### TRUSTS OF AN ADVOWSON.

(1) I give and devise unto the said (trustees) their heirs and Devise of adassigns All that advowson right of patronage and presentation of trust. and to the rectory and parish church of in the county of with the appurtenances To hold the same upon the trusts hereinafter mentioned (that is to say)

(2) Upon trust to present my son A B to the same when and as To present son the said rectory and parish church shall hereafter become vacant become vacant if my said son A B shall have previously become qualified to ac. if qualified. cept the same by taking holy orders and be willing to be presented thereto in order that my said son may be instituted and inducted the rector parson or incumbent of the said rectory or parish church But if he shall not be qualified at the time of the But if son shall vacancy in the said rectory and parish church or shall be unwill-not be qualified. ing to be presented as aforesaid then

(3) Upon trust to present either of my sons-in-law T D the Upon trust husband of my daughter Mary or P T the husband of my to present to son-in-law. daughter Jane to the same when and as the said rectory and parish church shall hereafter become vacant if either of them the said T D or P T shall have previously become qualified to accept the same by taking holy orders and be willing to be presented thereto in order that my said sons-in-law may be so insti- Preference to tuted and inducted as aforesaid And I further direct that if be given to both my said sons-in-law T D and P T shall have become quali-in-law. fied as aforesaid and be desirous of being presented thereto the preference shall be given to the said T D.

particular son-

LXXXVIII.
TRUSTS OF
AN ADVOWSON.

(4) And subject to the trusts aforesaid.

And subject to the trusts. To present nominee of owner of real estate. (5) Upon trust to present such nominee or nominees as the person for the time being entitled to the said {manors} and hereditaments hereinbefore devised or to the receipt of the rents and profits thereof under this my will shall appoint or direct.

Provision that sons and sonsin-law shall be appointed at any time. (6) Provided always and I hereby further direct that if at any time during the said term of years my said son A B or either of my said sons-in-law T D and P T shall become qualified as aforesaid and be willing to be presented to the same the said (trustees) and the survivor of them the executors administrators and assigns of such survivor shall from time to time present such of them as shall have become qualified and willing as aforesaid my said son to be preferred to my said sons-in-law T D and P T and my said son-in-law T D to be preferred to my said son-in-law P T as aforesaid.

To present a person under an honorary engagement to resign in favour of a son taking orders. (7) Upon trust to present the said rectory or parish church such person as the said (trustees) or the survivor of them his heirs and assigns shall think proper and as shall be qualified to accept the same Such last presentation to be made nevertheless under an honorary (a) engagement on the part of the person so presented to resign the said rectory or parish church in favour of such of my said sons as shall first take holy orders when and so soon as he shall be qualified to be presented thereto.

Bonds of resignation. (a) As bonds of special resignation, as well as bonds of general resignation, are now declared to be void, see *Fletcher v. Lord Sondes*, 2 B. and A. 835, 3 Bing. 501, and 1 Bli. N. S. 144. S. C. an engagement of this nature is all that can be now done to secure a resignation.

LXXXIX. BEQUEST OF L.P.ASCHOLDS AND TRUSTS THERROP

## LXXXIX.

## BEQUEST OF LEASEHOLDS AND TRUSTS THEREOF.

(1) I give devise and bequeath all my leasehold (a) messuages Bequest of lands tenements and hereditaments whatsoever and wheresoever unto the said (trustees) their executors administrators and assigns according to the nature and quality thereof respectively for the respective terms estates or interests which I shall have therein at the time of my decease.

(2) Upon trust that the said (trustees) and the survivor of Upon trust to them his executors administrators and assigns do and shall out and perform of the rents and profits of the said leasehold premises pay and the covenants, perform the rents and covenants which shall be payable at the time of my decease and be reserved and contained in the renewed leases of the same premises and which from time to time ought to be paid and performed on the part of the lessees thereof.

(3) And upon this further trust that the said (trustees) and and endeavour the survivor of them his executors administrators and assigns do newals. and shall from time to time use his and their utmost endeavours to procure renewals of the subsisting leases of the said leasehold premises upon reasonable terms so that the said premises may during the continuance of the trusts of this my will so far as the circumstances of the case will admit be respectively held at least for three lives or for twenty-one years absolute.

Variation.

,,

<sup>(</sup>a) Or it may be, " all that messuage or tenement situate at

(4) And for the purposes aforesaid do and shall out of rents

LXXXIX.
BEQUEST OF
LEASEHOLDS
AND TRUSTS
THEREOF.

And insure the lives of cestuis que vie.

and profits of the said leasehold premises effect and keep on foot insurances on the lives of the respective cestuis que vie named in such of the said subsisting leases as shall be held for lives or years determinable on lives or on the lives of such of the cestuis que vie as the said (trustees) or the survivor of them his executors and administrators shall deem it advisable to effect an assurance for such sum or sums as in the opinion of the said (trustees) or the survivor of them his executors and administrators shall be sufficient to enable them or him whenever any such life or lives shall drop or fall in to effect a renewal of the subsisting lease in which such life shall have been named a cestui que vie. And do and shall apply the sums and sum from time to time to be received on the dropping or falling of any such life in effecting a renewal of the subsisting lease in which such life shall have been named a cestui que vie.

And apply money in affecting a renewal.

And the surplus to persons entitled to premises.

(5) And do and shall pay the surplus of such money (if any) to the person who under the trusts hereinafter declared shall for the time being be in the possession of the said leasehold premises.

or out of rents or by mortgage to raise sufficient to (6) Or out of the rents and profits thereof in the meantime or by mortgage thereof or of any part thereof levy and raise such sums of money as shall be sufficient to effect the renewal of any of the subsisting leases of the said premises when and as often as a renewal shall be adviseable or necessary (a) and when from the effecting no insurance or from the insufficiency of the money arising from any such insurance as aforesaid or from any other cause whatsoever there shall be no other funds or insufficient funds for the purposes aforesaid do and shall apply the sums and sum to be so raised in effecting such renewal or renewals accordingly And for the purposes aforesaid the said [trustees] or the survivor of them his executors or administrators

And apply the money in effecting renewals.

Practical direction.

<sup>(</sup>a) The trusts for insurance are frequently omitted, and that to raise the money by mortgage &c. above inserted. If this mode is adopted omit the part in brackets.

and assigns do and shall from time to time surrender the subsisting lease or leases of the said leasehold premises and accept new leases thereof and do and shall execute all such other acts and deeds as shall be necessary for the purposes aforesaid And I do hereby declare that (subject to the trusts hereinbefore declared) the said (trustees) or the survivor of them his executors administrators and assigns shall stand and be possessed of the said leasehold premises for and during the terms for which premises, the same shall be respectively held either at the time of my decease or by virtue of the trusts for renewal hereinbefore contained

LXXXIX. RECEIPTS OF LPACEROL DA AND TRUSTS THEREOF.

Surrender and accept leases. Declaration that trustees shall stand possessed of

(7) Upon and for such trusts intents and purposes and with upon same under and subject to such powers provisoes and declarations as holds. regard being had to the difference in the nature of the respective estates will best or nearest correspond with the uses trusts intents purposes powers provisoes and declarations hereinbefore expressed and declared of and concerning the {manors messuages} hereditaments and premises hereinbefore devised.

triiete se free-

(8) Provided always nevertheless that the said leasehold pre- Proviso that mises for the effect or purposes of transmission shall not vest not vest for the absolutely in any person or persons hereby made tenant or tenants in tail of the said {manors &c.} unless such person or per- until persons sons shall respectively live to attain the age of twenty-one years one. but nevertheless such person or persons shall (subject to any prior subsisting interest in the premises) be entitled to the yearly rents and profits of the said leasehold premises for his or her absolute use and benefit.

attain twenty-

XC. DECLARATION OF TRUSTS OF PERSONALTY.

### XC.

### DECLARATION OF TRUSTS OF PERSONALTY.

Trust to invest monies.

(1) And do and shall lay out and invest the said sum of pounds (a) and the stocks funds and securities upon which the same shall be invested in their or his names or name in the parliamentary stocks or public funds of Great Britain or at interest on government or real securities in England or Wales And from time to time to alter (b) vary and transfer the hereinbefore mentioned trust monies so to be laid out and invested as aforesaid for or unto other stocks funds or securities of the like nature when and as often as they or he shall think fit.

and vary the securities.

Direction that variation shall he with the consent of [wife] and after ber decease at the discretion of trustees.

(2) And I do hereby direct that every such calling in sale alteration variation or transfer shall (c) [during the life of my said wife be made with her consent in writing and after her decease] be made at the discretion and of the proper authority of the said (trustees) or the survivor of them or the executors administrators or assigns of such survivor.

Trust to invest and vary a se-

(3) Upon trust that the said (trustees) or the survivor of cond sum very them or the executors administrators and assigns of such survi-

Variation. Residue.

(a) Or as it may be, according to the circumstances, " the residue of the said monies.

Monies from sale.

"the monies to arise from such sale."

Or it may be all of these.

Power to vary.

(b) This power is absolutely necessary, as without it the trustees cannot vary the securities, Harrison v. Harrison, 2 Atk. Bostock v. Blackeney, 2 Bro. C. C. 653.

Variation.

(c) This may of course be varied to suit the circumstances.

vor do and shall lav out and invest the same in any of the stocks funds and securities hereinbefore mentioned And do and shall Twith the consent of the said A B during her life and after her decease] at their or his discretion alter and vary the said last short and by mentioned sum of pounds into other stocks funds and securities of the like nature and in the manner hereinbefore mentioned.

XC. DECLARATION OF TRUSTS OF PERSONALTY.

the first.

(4) Upon trust that they the said (executors) and the survivor Trust to conof them and the executors administrators and assigns of such estate into survivor do and shall as soon as conveniently may be after my decease sell dispose of and convert into money so much [thereof (a)] as shall not consist of money or securities for money and as shall be in its nature saleable and collect get in and receive the residue thereof.

money.

(5) Do and shall continue the same or any part thereof in its to continue actual state of investment or call in and convert the same.

personalty in present investment.

(6) If my said wife shall survive me Then do and shall assign Trust to pay make over and pay the said sum (or the said residue) to my said due to wife if wife her executors administrators or assigns for her and their absolute use and benefit But if my said wife shall die in my lifetime then do and shall pay the same

(7) And upon this further trust that they the said trustees Trust to pay or trustee for the time being do and shall during the life of the sum to marsaid Mary B pay the (b) [interest and dividends of the forto such pounds and the stocks funds and securities in person as she which the same shall for the time being be invested] into the point.] hands of the said Mary B [or to such person or persons as she shall whether covert or sole by any writing under her hand and seal from time to time appoint to the intent that the same may be for her separate use and not subject to the debts controul or

dividends of ried women should ap-

(b) And see ante p. 193 n. (a).

Variation.

<sup>(</sup>a) Or it may be "so much of my personal estate"

XC.
DECLARATION
OF TRUSTS OF
PERSONALTY.

interference of her present or any future husband. And the receipt or receipts of the said Mary B. for the said interest and dividends [or of the persons or person she shall appoint to receive the same] shall whether she shall be covert or sole be an effectual discharge or effectual discharges for the money therein acknowledged to be received.

Her receipts to be sufficient discharges.

Subject to a sum of pounds.

(8) And subject and without prejudice to the levying and raising of the said sum of pounds and the several trusts hereinhefore declared

Subject to an annuity.

(9) And subject and without prejudice to the yearly rent or sum of pounds and the powers hereinbefore given for securing the same

Subject to a life interest.

(10) But subject and without prejudice to the life interest of [my said wife] therein.

Subject to bequests. (11) But subject and without prejudice to the several bequests in this my will contained to or in favour of my said wife and my sister A.P.

Trust to pay the dividend of a sum of stock to wife if she shall continue unmarried, and if she shall marry, a smaller sum.

(12) Upon trust that they the said (trustees) and the survivor of them and the executors administrators and assigns of such survivor do and shall pay the interest and dividends of the said sum of pounds and the stocks funds and securities on which the same shall be invested to or permit the same to be received by my [dear](a) wife and her assigns during her life for her and their own use and benefit if she shall so long continue my widow and unmarried But if my said wife shall happen to marry after my decease then that the said (trustees) or the survivor of them and the executors administrators and assigns of such survivor do and shall by and out of the interest and dividends of the said

Practical direction.

<sup>(</sup>a) It may be here observed, that it is better to omit all tender expressions to the relatives of the testator, although they are very usual in wills, as in some cases undue stress has been laid upon them. See Rogers v. Rogers, 3 P. Wms. 193.

pounds and the stocks funds and securities on which the same shall be invested pay such yearly sum or sums as shall amount to one half of the interest and dividends payable to my said wife before such marriage and do and shall continue such last mentioned payment for and during the remainder of her life.

XC. DECLARATION OF TRUSTS OF PERSONALTY.

(13) And from and immediately after the decease or marriage of my said wife which shall first happen (but in case of her marriage then subject and without prejudice to the payment of the said annuity of pounds (smaller sum.)

And after her decesse or marriage.

(14) Upon trust that they the said (trustees) and the survivor Upon trust to of them and the executors administrators and assigns of such survivor do and shall during such time as my said wife shall continue unmarried with and out of the said interest and dividends of the said trust monies stocks funds and securities levy and raise the annual sum of pounds of lawful money of Great Britain and Ireland and pay the same to my dear wife or her assigns by two equal half-yearly payments on the and the day of the first payment thereof to commence and be made at the expiration of three calendar months after my decease.

pay annual sum to widow, durante viduitate.

(15) But if my said wife shall marry again after my decease And if she then do and shall after such marriage with and out of the interest and dividends levy and raise the sum of pounds and pay the same to my said wife or her assigns during the remainder of her life at or in the common dining-hall of Lincoln's Inn by two equal half-yearly payments on the day of and the day of

the first of such last mentioned payments to commence and be made at the expiration of six calendar months after such And I do hereby declare that each of the said annual sums of pounds and pounds shall be paid without any deduction or abatement whatsoever.

(16) Provided always And I do hereby declare that the pro- Provision to be vision made for my said wife by this my will shall be in lieu and dower and in full satisfaction of all dower and freebench and all customary

jointure.

XC.
DECLARATION
OF TRUSTS OF
PERSONALTY.

That if wife refuse such provision, trustees to stand possessed of sum of pounds upon same trusts as if she were dead.

rights to which she may be entitled out of any estate in which I may be seised during coverture with her [And also in lieu and in full satisfaction of the annual sum of pounds secured to her for her jointure by the settlement executed previously to our marriage which settlement bears date the day of if my said wife shall refuse to accept the said provision in lieu and satisfaction of such dower freebench customary rights [and jointure] as aforesaid then immediately after such refusal the said trustees or trustee for the time being shall stand and be possessed of the said sum of pounds and the stocks funds and securities on which the same shall be invested upon and for such of the trusts intents and purposes and with under and subject to such of the powers provisoes and declarations hereinbefore declared of and concerning the same as would takee ffect if my said wife were then dead.

Trust for the benefit of married woman as she shall appoint, but not by anticipation. (17) And do and shall pay (a) [the other moiety or equal half part of] the said sum to such person or persons and for such intents and purposes only as (b) my said daughter Mary B. shall whether covert or sole from time to time by any writing under her hand direct or appoint but not so as to deprive herself of the benefit thereof by sale mortgage charge or otherwise in the way of anticipation And in default of such direction or appointment into the proper hands of the said Mary B. for her own sole and separate use and benefit exclusively of any husband with whom she may intermarry and without being subject to his debts controul interference or engagements.

Trust of sum after decease of A B for such persons as A B

(18) And from and after the decease of the said A B the said sum of pounds and the stocks funds and securities in which the same shall be invested and the interest and dividends thereof

Variations.

<sup>(</sup>a) Or it may be, "the interest and dividends of," or "the sum of pounds."

<sup>(</sup>b) Or it may be, where there are two or more daughters, "as such respective daughter shall &c."

shall remain and be In trust for such person or persons upon and for such trusts intents and purposes and with under and OF TRUSTS OF subject to such powers provisoes and declarations as the said A B shall (a) by any deed for deeds instrument or instruments shall by deed in writing with or without power of revocation and new appointment to be by him sealed and delivered in the presence of two or more credible witnesses or by his last will and testament in writing or any codicil thereto in writing [or(b)] any writing in the nature of a will to be by him signed and published in the presence of and attested by three or more credible witnesses from time to time direct or appoint and in default of such direction and appointment and so far as any such direction or appointment if incomplete shall not extend

XC. DECLARATION PERSONALTY.

or will appoint and in default

(19) In trust for the said AB as part of his personal estate.

To A B as personal estate.

(20) Upon trust that they the said trustees or trustee for the Trust to pay time being do and shall pay the interest and dividends of the pounds [and the stocks funds and securities on which the same shall be invested] unto or permit the same to be received by AB and her assigns during her life (c) for her and their own absolute use and benefit [and also (d) such proportional part thereof as shall accrue and become due between the time of the said investment or last payment and her decease.]

interest of sum to A B for life, [and proportional part.]

(21) And from and immediately upon the decease (e) of the And on death said AB Upon trust

of AB upon trust

(b) If the donee be not married, or an infant, omit the Married wowords within brackets.

(c) If so intended,

" if she shall so long continue a widow and unmarried."

(d) This provision is necessary if according to the intention of the parties. Rashleigh v. Masters, 3 B. C. C. 99.

(e) " or marriage."

Married wo-

man, During widowhood.

<sup>(</sup>a) If the donee of the power be a married woman, insert, " notwithstanding her coverture," and alter the gender

XC. DECLARATION OF TRUSTS OF PERSONALTY.

Trust for such persons as would take under the statutes of distribution.

Trust to pay interest to [wife], she supporting child or children.

- (22) In trust for the person or persons (a) who under the statutes made for the distribution of the estates of intestates would be entitled thereto (b) and to be divided between or among the said persons respectively if more than one in the shares in which the same would be divisible under the said statutes.
- (23) Upon trust to pay the (c) [interest dividend and annual produce of the said trust monies stocks funds and securities] unto or permit the same to be received by my wife M. during her life [(d) and also such proportional part thereof as shall accrue and become due between the time of the said investment or last payment thereof and her decease] she to apply the same in supporting maintaining and educating all (e) and every my child and children who shall be living at the time of my decease or be born in due time thereafter in a manner suitable to their rank and circumstances.

Trust to raise a sum of money, the interest of which when invested will amount to pounds a-year. (24) And do and shall with all convenient speed after my decease from and out of the said [trust monies] raise and levy such sum or sums of money the yearly interest dividends and produce of which when invested as hereinafter is directed will amount to or produce the clear yearly sum of pounds of lawful money of Great Britain and Ireland clear of all deductions and abatements whatsoever and (invest the same and pay interest and dividends to wife for life and if she shall marry a smaller sum See ante, 14.15.) And if at any time the dividends interest and annual produce of the said sum or sums when invested as hereinbefore is directed shall from any cause or circumstance whatsoever

To pay interest thereof to wife, and raise deficiency out

Exclusive of wife.

Variation for

Variation for married woman.

(a) If it is intended, say, "exclusively of my surviving wife."

(b) Where it is applicable insert,
"thereto as if she had died possessed thereof intestate and un-

variation for real estate be the trust property, say, real estate. " rents and profits of the said messuages, &c."

married.

(d) If real estate, omit this.

Variation for one child.

(e) If there be only one child to be provided for, say, "my daughter Eliza" or "my son William."

prove insufficient to answer and satisfy the purposes aforesaid the said (trustees) and the survivor of them his executors and administrators do and shall by and out of the interest and dividends and annual produce of the monies which shall come to their or his Of other hands by the ways and means hereinbefore mentioned raise such further sum or sums of money as shall be sufficient to make good such deficiency and pay and apply the same accordingly.

XC. DRCT.AR ATTOM OF TRUSTS OF PERSONALITY.

(25) In trust that they the said (trustees) and the survivor of Trust to raise them his heirs and assigns do and shall from and out of the money, and said trust monies (a) levy and raise the sum of and do and shall stand possessed thereof upon the trusts herein- or after mentioned (or pay the same to AB her executors administrators and assigns for her and their absolute use and benefit.) to AB.

pounds stand pos-sessed thereof

(26) Upon trust during the life of the said AB to pay and Trust to apply apply the interest and dividends thereof for his maintenance and dividends for support or otherwise for his benefit and in such manner as the the life of AB said (trustees) and the survivor of them his executors and admitenance. nistrators shall think proper.

for his main-

(27) Upon trust that they the said (trustees) and the survivor Trust to pay of them his executors and administrators do and shall by with AB. and out of the interest dividends and annual produce of the said trust monies stocks funds and securities raise and pay yearly and every year the annual sum of pounds of lawful money of Great Britain and Ireland without any deduction or abatement whatsoever to A B of &c. for and during his life by four equal quarterly payments on the day of the day of the day of day of the first quarterly and the payment of the said annual sum to be made on such of the said days as shall first happen after my decease.

(28) In trust for my two nephews AB and CD to be divided In trust for between them in equal shares at their respective ages of twenty-

<sup>(</sup>a) See ante p. 214. (24.)

XC.
DECLARATION
OF TRUSTS OF
PERSONALITY.

If either die under twentyone years as to his share in trust for the other. If both die under twentyone years in trust for all the children of X Y. But if no children, over.

one years But if either of my said nephews shall die under the age of twenty-one years Then as to the share of him so dying under that age In trust for the other of them when he shall attain the age of twenty-one years And if both my said nephews shall depart this life under the age of twenty-one years In trust for all and every the children and child of my brother X Y who being a son or sons shall attain the age of twenty-one years or being a daughter or daughters shall attain that age or marry to be divided between such children if more than one in equal shares And if there shall be but one such child the whole to be in trust for such one child And if there shall be no child of my said brother X Y who being a son shall attain twenty-one years or being a daughter shall attain that age or marry In trust

Trust monies to be as to one moiety upon trust, &c. (28) The said trust monies stocks funds and securities and the interest dividends and annual produce thereof or so much thereof as shall not have been disposed of under the provisions herein-before contained shall remain and be as follows (that is to say) As to one moiety or equal half part thereof upon trust &c.

And as to the other moiety upon trust.

(29) And as to the other moiety or equal half part thereof Upon trust

Trust as an auxiliary fund for the payment of sum or portions.

(30) Upon trust as an ulterior or auxiliary security for the payment of the said annual sum of pounds hereinbefore directed to be raised (or for the payment of the sums hereinbefore charged on the said {manors} and hereditaments for the portions younger of my children.)

XCI. TO DET TO INVEST MONEY IN LANDS.

### XCI.

### TRUST TO INVEST MONEY IN LANDS.

(1) Upon trust to call in and convert the said sum of pounds (a) and the stocks funds and securities in which the money, same shall be invested into money.

To convert

(2) And lay out and invest the money arising thereby in the and lay out purchase of freehold copyhold or leasehold manors messuages lands tenements and hereditaments to be situate in England or (b) Wales and settle and assure the estates so to be purchased to the uses upon and for the trusts intents and purposes and with under and subject to the powers provisoes and declarations hereinafter expressed and contained or as near thereto as the nature and quality of the estates and the deaths of the parties will then admit of.

or leasehold

(3) And until a proper purchase shall be made do and shall Until purchase pay the interest and dividends of the said sum of and the stocks funds and securities on which the same shall be paid to the laid out and invested to the persons or person who would be titled to the

of the estates, pounds interest to be

Particular county.

<sup>(</sup>a) See ante p. 193, n. (a)

<sup>(</sup>b) Or it may be, " in the county of &c."

<sup>(</sup>c) This clause is strictly unnecessary, as the persons entitled Practical dito rents of the lands will also be entitled to the interest until the rection. purchase is made; and that although a contrary intention may be inferred from the will. Sitwell v. Bernard, 6 Ves. 520.

XCI. TRUST TO INVEST MONEY IN LANDS. entitled to the rents issues and profits of the estates to be purchased with the same in case such estates were actually purchased in the manner hereinbefore mentioned.

Direction that leaseholds shall not vest absolutely in tenant in tail. (4) And I do hereby further direct that if the said messuages lands tenements or hereditaments so to be purchased or any part thereof shall be held by any lease or leases for years the same shall not for the purpose of transmission vest absolutely in any person who under the limitations hereinafter contained would be tenant in tail of the said messuages lands tenements and hereditaments so to be purchased unless or until he shall attain the age of twenty-one years But such tenant in tail shall nevertheless be entitled during his minority to the rents issues and profits thereof.

XCII. TRUSTS PROVIDING POD THE RANKRIIPIYY OF LEGATER.

### XCII.

#### TRUSTS PROVIDING FOR THE BANKRUPTCY OF LEGATER.

Upon trust that they the said (trustees) and the survivor of Trust that them his {executors and administrators} do and shall until the said ment, bank-A B shall at any time or times assign charge or attempt to assign ruptcy, &c. trustees shall or charge or in any manner dispose of the [interest (a) dividends pay interest to and annual produce of the said trust monies stocks funds and life. securities] or any part thereof or shall execute any assignment or enter into any contract by means whereof the said linterest dividends and annual produce] shall be assigned charged or incumbered either at law or in equity or until the said A B shall be declared a bankrupt or shall take the benefit of any act or acts of parliament for the relief of insolvent debtors or until the said [interest dividends and annual produce] shall by any other means whatsoever become vested in any other person or persons pay the said [interest dividends and annual produce] to the said AB during the term of his life for his own use and benefit or permit him to receive the same But if the said A B But if such shall at any time or times so assign or charge the said [interest occur, then dividends and annual produce or attempt to assign or charge the same as aforesaid or shall execute any such assignment or enter into any such contract as aforesaid or shall be declared a bankrupt or take the benefit of any such insolvent debtor's act as aforesaid Or if the said [interest dividends and annual produce] shall by any other means whatsoever become vested in any other person or persons then Upon trust

events should

<sup>(</sup>a) Or if the trust be of real estate, say. " rents and profits of the said messuages &c."

XCIII. TRUSTS OF PROPERTY AS PHONT-STREET

### XCIII.

#### TRUSTS OF PROPERTY AS HEIR-LOOMS.

Trusts of furniture plate

(1) I give and bequeath unto the said (trustees) their exeand jewels. (a) cutors administrators and assigns all my household furniture (b) books plate pictures glass and effects in or about my house at and also all my jewels to hold the same unto the said (trustees) their executors administrators and assigns upon and for the trusts intents and purposes following.

As to the furniture and plate.

(2) As to the household furniture books plate pictures glass and effects

to permit wife to use the same for life.

(3) Upon trust to permit and suffer my wife from time to time and at all times hereafter during her life to have use and enjoy the said furniture books plate pictures glass and effects And after her decease

After ber death as heirlooms.

(4) Upon trust to permit the same to go and be used and enjoyed with my said house by the person or persons for the time being entitled under this my will to the possession or to the receipt of the rents and profits of (c) the said {manors}

(b) Or it may be,

Variations.

<sup>(</sup>a) See the declaration of the trusts of furniture and jewels, Vol. I. Class IV. p. 304.

<sup>&</sup>quot;the household furniture &c. which shall be in my house at at the time of my decease."

<sup>(</sup>c) Or it may be, "to the possession of my said house at

hereditaments and premises hereinbefore devised. To the intent that as far as the rules of law and equity will permit the same may go and be as heir-looms.

XCIII. TRUSTS OF PROPERTY AS MEND-I COME

(5) Provided always that for the effect or purpose of trans- Proviso that mission the said furniture books plate pictures glass and effects shall not vest absolutely in any person or persons hereby made tenant or tenants in tail unless such person or persons shall twenty-one. attain the age of twenty-one years vet nevertheless such person or persons shall during during his or her respective minority be entitled to the use of the same.

furniture shall not vest in tenant in tail. un less be attain

(6) And I hereby direct that the said (trustees) and the Power to the survivor of them his executors administrators and assigns do and shall from time to time examine the state and condition of the said furniture books plate pictures glass and effects and cause such reparations and restorations to be made of and in the same as they or he shall judge reasonable and the expense of which shall be defraved by the person or persons for the time being entitled to the use thereof under the trusts of this my will.

trustees to repair the furniture, &c.

(7) And I do hereby further direct that the said (trustees) Power to the and the survivor of them and the executors administrators and assigns of such survivor do and shall from time to time at the request in writing of the person or persons for the time being entitled to the use thereof exchange the said furniture plate and effects or any part thereof for any other article of furniture and plate or for any other articles of equal weight and value the expense of all which exchanges shall be defrayed by the person or persons for the time being entitled to the use of the said furniture plate and effects under the trusts of this my will.

trustees to exchange the furniture, &c.

(8) And do and shall permit the said furniture plate and Power to pereffects or any part thereof to be from time to time altered by ture, &c. to be the person or persons for the time being entitled to the use thereof as he she or they shall think fit provided the same be

mit the furnialtered.

XCIII. TRUSTS OF PROPERTY AS HEIR-LOOMS. not diminished in value by any such alteration and the expense thereof be borne by the person or persons causing the same to be made.

As to jewels,

(9) And as to my jewels.

in trust to permit wife to use them. (10) Upon trust to permit and suffer my dear wife from time to time and at all times hereafter during her life to use and enjoy the said jewels And after her decease

and after her decease, upon trust as heirlooms. (11) Upon trust to permit the same to be used and enjoyed by the person or persons for the time being entitled under this my will to the possession or to the receipt of the rents and profits of the said {manors} hereditaments and premises hereinbefore devised. To the intent that as far as the rules of law and equity will permit the same may go and be as heir-looms.

YCIV LIMITATIONS OF REAL PRO-PERTY IN PAVOUR OF CHILDREN OF TESTATOR.

### XCIV.

# LIMITATIONS OF REAL PROPERTY IN FAVOUR OF CHILDREN of testator. (a)

(1) To the use of all and every my children (b) now born or To the use of all testator's hereafter to be born who being a son or sons shall attain the age children in of twenty-one years or die under that age leaving issue of his or remainders. their body or being a daughter or daughters shall attain that age or marry under that age with the consent of her or their guardian or guardians for the time being to be equally divided between or amongst them if more than one as tenants in common in tail with cross remainders in tail And if there shall be but one to the use of the remaining or only child in tail.

(2) To the use of all and every such one or more exclusively To the use of of the others or other of the said children [or grandchildren] of of AB as AB the said AB for such estates in such shares if more than one charged with such annual or other sums of money for their or any of their benefit and with such remainders or limitations over between or among them and in such manner as the said AB shall by deed or will direct or appoint And in default of such And in default direction or appointment and so far as any such direction or ment, appointment if incomplete shall not extend to the use of all and to all of the every the children of the said A B to be equally divided between children as tenants in them if more than one as tenants in common in fee And if common in fee. there shall be but one such child to the use of that remaining or only child in fee.

such children shall appoint.

Variation.

<sup>(</sup>a) Some of the clauses in this section occur before; but it was thought necessary to bring all the limitations to children under one view.

<sup>(</sup>b) Or it may be, " the children of my daughter Mary B."

XCIV.
LIMITATIONS
OF REAL PROPERTY IN
FAVOUR OF
CHILDREN OF
TESTATOR.

o [son] for life.

To trustees to preserve contingent remainders.

(3) To the use of my [son] (a) A B and [his] (a) assigns during his life without impeachment of waste

WILLS.

(4) And immediately after the determination of that estate by forfeiture or otherwise in [his] lifetime. To the use of the said (trustees) and their heirs during the life of the said AB In trust for [him] the said AB and by the usual ways and means to preserve the contingent remainders hereinafter limited from being defeated.

After decease of [son.]

(5) And immediately after the decease of the said A B

To his sons in tail (b) [male.]

(6) To the use of the first and every other [son] (a) of [his](a) body severally successively and one after another according to their respective seniority and priority of birth in tail [male.] (c)

In default of his sons to second [son] for life.

To trustees to preserve.

(7) And in default of such issue to the use of my second [son] I B and his assigns during his life without impeachment of waste And immediately after the determination of that estate by forfeiture or otherwise in his lifetime. To the use of the said (trustees) and their heirs during the life of the said I B. In trust for him the said I B and by the usual ways and means to preserve the contingent remainders hereinafter limited from being defeated.

And in default of issue to third and other [sons] successively for life. (8) And in default of such issue to the use of my [third] and every other of my [sons] (a) and [his] assigns severally successively and one after another according to [his] respective seniority and priority of birth during [his] life without impeachment of

Variation for female devisees.

for (a) All these limitations will equally serve for female devisees, with the alteration of the gender and the changing of the word "sons" or "nephews," &c. for "daughters" or "neices," &c.

Practical direction. (b) The limitations to the family may be extended to suit the circumstances. Any further limitations will be precisely in the same words as in the above form, with the alteration of the names.

Variation for different estates in tail. (c) If tail female, alter the word "male" to "female;" if in tail general, omit the word "male."

waste And after the respective determination of such estate for life To the use of the said (trustees) and their heirs during the life of such [son] respectively. In trust for him by the usual ways and means to preserve the contingent remainders hereinafter limited.

XCIV. IJMTTATIONS OF REAL PRO-PERTY IN PAVOTER OF CHILDREN OF TESTATOR.

(9) And immediately after his respective decease To the use And after their of his respective first and every other son of [his] (a) body seve- respective decease, to their rally and successively one after another according to [his] re- sons successpective seniority and priority of birth in tail [male] and so that the elder and eldest of my said [sons] and their said sons respectively shall take before and be preferred to the younger and youngest respectively And in default of such issue

respective desively in tail.

(10) To the use of all and every [my] daughters to be divided To daughters equally between or among them as tenants in common in tail commonin tail. with cross remainders between or among them in tail and if all my said daughters shall die without issue save one or if there shall be but one daughter to the use of that one or only daughter in tail And in default of such issue

(11) To the use of AB his executors administrators and as- To the use of signs for the term of ninety-nine years to be computed from the decease of the said M and such failure of the issue of her years upon the body as hereinbefore is mentioned and thenceforth next ensuing the benefit of if my daughter E shall so long live upon the like trusts for the and her issue. separate use and benefit of the said E and subject thereto with the like remainders and limitations over to the use and for the benefit of the said E and her issue and for preserving contingent remainders.

trustee for ninety-nine same trusts for one [daughter] as are before declared in favour of another.

(12) To the use of each and every of my [sons](a) and his To all the assigns severally and successively according to [his] (a) respec-

[sons] for life.

<sup>(</sup>a) See ante 224. n. (a).

XCIV.
LIMITATIONS
OF REAL PROPERTY IN
PAVOUE OF
CHILDREN OF
TESTATOR.

tive seniority and priority of birth during [his] life without impeachment of waste.

To trustees to preserve contingent remainders. (13) And after the respective determination of such estate for life To the use of the said (trustees) and their heirs during the life of such [son] respectively In trust for him by the usual ways and means to preserve the contingent remainders hereinafter limited And immediately after the decease of such [son] respectively To the use of [his] respective first and every other [son] of [his] body severally and successively and one after another according to his respective seniority and priority in birth in tail male And so that &c. (as in 9.)

And on failure of such estates.

(15) And on the failure or determination of the said estates hereinbefore limited

To son for term of years. (a)

(16) To the use of my [eldest] son and his assigns for the term of ninety-nine years to be computed from my decease and thenceforth next ensuing if he shall so long live for his and their absolute use and benefit And immediately after the determination of that estate by forfeiture or otherwise in his lifetime To the use of the said (trustees) and their heirs during his life In trust for him the said [son] and by the usual ways and

To trustees to preserve.

Preservation of estate in testator's family.

<sup>(</sup>a) If it is wished to preserve the estate in the testator's family as long as possible, this limitation should be adopted instead of the usual devise of an estate for life to the son; as no recovery can be suffered during the duration of the term. See Dormer v. Parkhurst, 3 Atk. 135. 6 Bro. Parl. Ca. 351. Another plan is, to give the legal estate for the life of the son to trustees, which would effectually prevent a recovery being suffered until his death, unless the concurrence of the trustees was obtained. See Marwood v. Turner, 3 P. Wms. 171. Goodrich v. Brown, 2 Freem. 180. And in this case there is no necessity for the usual limitation to the trustees to preserve contingent remainders, as an equitable tenant for life cannot destroy them. Penhay v. Hurrell, 2 Freem. 213. Fearne Cont. Rem. 320. Butl. edit. And see post, placitum (34.)

means to preserve the contingent remainders hereinafter limited from being defeated.

XCIV. LIMITATIONS OF REAL PRO-PROTY IN PAYOUR OF CHILDREN OF TERTATOR.

(17) To the use (a) of my eldest son W and his assigns during his life without impeachment of waste. And after the decease of my said son W

To eldest son for life.

(18) To the use of the first and every other son of my said and after his son W severally and successively and one after another accord-sons in tail ing to his respective seniority and priority of birth in tail male And in default of such issue

(19) To the use of my second son T and his assigns during To second son his life without impeachment of waste and after the decease of my said son T

(20) To the use of the first and every other son of my said To his sons in son T severally and successively and one after another according to his respective seniority and priority of birth in tale male And in default of such issue

(21) To the use of my third and every other subsequently To third and born son and his assigns severally and successively and one after other sons another according to his respective seniority and priority of serve. birth during his life without impeachment of waste and after his respective decease

other sons for

(22) To the use of his respective first and every other son To their sons severally and successively one after another according to his in tail male. respective seniority and priority of birth in tail male And so that the respective son or sons of the elder of my said subsequently born sons and his or their issue male shall always take

<sup>(</sup>a) The limitations before given in 3-9, are sufficient for all usual purposes, however extensive. To show their application, however, more clearly, the above clauses 17-23 have been inserted.

XCIV.
LIMITATIONS
OF REAL PROPERTY IN
FAVOUR OF
CHILDREN OF
TESTATOR.

before and be preferred to the respective son or sons of the younger of my said subsequently born sons and his or their issue male And in default of such issue

To eldest daughter for (23) To the use of my eldest daughter M and her assigns during her life without impeachment of waste And after the decease of my said daughter M

To her sons in tail male.

(24) To the use of the first and every other son of my said daughter M severally and successively and one after another according to their respective seniority and priority of birth in tail male And in default of such issue

To second and other daughters for life.

(25) To the use of my second and every other subsequently born daughter and her assigns severally and successively one after another and according to her respective seniority and priority of birth during her life without impeachment of waste And after her respective decease

To their sons respectively in tail male.

(25 a) To the use of her respective first and every other son severally and successively one after another according to his respective seniority and priority of birth in tail male. And so that the respective son or sons of the elder of my said subsequently born daughter and his or their issue male shall always take before and be preferred to the respective son or sons of the younger of my said subsequently born daughters and his or their issue male. And in default of such issue

To sons of sons in tail general.

(26) To the use of the first and every other son of every son of my body now born or hereafter to be born severally and successively one after another according to his respective seniority and priority of birth in tail but so that the respective son or sons of the elder of such sons of my body and such his or their respective issue as aforesaid shall always take before and be preferred to the respective son or sons of the younger of such sons of my body and such his or their respective issue as aforesaid And for default of such issue

(27) To the use of the first and every other son of every daughter of my body now born or hereafter to be born severally OF REAL PROand successively one after another according to his respective seniority and priority of birth in tail but so that the respective son or sons of the elder of such daughters of my body and such his or their respective issue as aforesaid shall always take before and be preferred to the respective son or sons of the younger of such daughters of my body and such his or their respective issue as aforesaid And for default of such issue

XCIV. PERTY IN PAVOUR OF CHILDREN OF TESTATOR.

To sons of daughters in tail general.

(28) To the use of the first and every other daughter of my To daughters said son W severally and successively and one after another tail general. according to her respective seniority and priority of birth in tail And in default of such issue

(29) To the use of the first and every other daughter of my To daughters said son T severally and successively and one after another in tail general. according to her respective seniority and priority of birth in tail And in default of such issue

(30) To the use of the first and every other daughter of my To daughter third and every other subsequently born son severally and successively and one after another according to her respective seniority tail general. and priority of birth in tail but so that the respective daughter or daughters of the elder of my subsequently born sons and such his or their respective issue as aforesaid shall always take before and be preferred to the respective daughter or daughters of the younger of my said subsequently born sons and such their respective issue as aforesaid And in default of such issue

other sons in

(31) To the use of the first and every other daughter of my To daughter of said daughter M severally and successively and one after another according to her respective seniority and priority of birth in And in default of such issue

eldest daughter in tail general.

(32) To the use of the first and every other daughter of my To daughters second and every other subsequently born daughter severally other daughand successively according to her respective seniority in tail but ters in tail general.

XCIV.
LIMITATIONS
OF REAL PROPERTY IN
PAVOUR OF
CHILDREN OF
TESTATOR.

so that the respective daughter or daughters of the elder of my said subsequently born daughters and such her or their respective issue as aforesaid shall always take before and be preferred to the respective daughter or daughters of the younger of my said subsequently born daughters and such her or their respective issue as aforesaid (a)

To trustees to preserve.

(33) Provision as to trustees to preserve contingent remainders, ante LXXXIII. (29).

Proviso that if AB shall have sons born in the life time of testator, they shall take life estates instead of estates tail, remainder to trustees, remainder to sons in tail. (34) Provided always that if the said A B shall have any son or sons born in my life time the estate and estates tail to which he or they would respectively become entitled in the said {manors &c.} shall absolutely cease and determine and in lieu thereof such son or sons respectively shall in the manner order and course in which he or they would have taken estate or estates tail take life estates with remainder to the trustees hereinbefore named and their heirs respectively during their lives respectively in trust to preserve the contingent remainders with remainder to his and their respective first and other sons in tail.

Similar proviso as to daughters.

(35) Provided always that if the said AB shall have any daughter or daughters born in my lifetime as well the original share or shares as the share or shares to which such daughter or daughters respectively would by survivorship or accruer become entitled in the said {manors &c.} shall absolutely cease and determine and in lieu thereof respectively such daughter or daughters respectively shall in the manner order and course in which she or they would have taken estate or estates tail take life estates with remainder to the trustees hereinbefore named and their heirs respectively during their lives respectively in trust to preserve the contingent remainders with remainder to his and their respective first and other sons in tail.

<sup>(</sup>a) These limitations may of course be transposed and extended to suit the circumstances of the case.

(36) To the use of all and every or such one or more exclusively of the others or other of the children or child of the said A B by the said C B at such age or ages days or times for such estate or estates interest or interests and if more than one in such parts shares and proportions either absolutely or conditionally and subject to such charges conditions limitations over and restricted to or in favour of any others or other of the said children as the said A B shall from time to time by any deed or deeds instrument or instruments in writing with or without power of revocation to be by him sealed or delivered in the presence of and attested by two or more credible witnesses or by his last will and testament in writing or any codicil or codicils thereto to be by him signed and published in the presence of and attested by three or more credible witnesses direct limit or appoint And in default of such direction limitation or appointment

XCIV. LIMITATIONS OP REAL PRO-PERTY IN PAVORE OF CHILDREN OF TESTATOR.

To the use of such children of AB by CB as A B shall by deed or will appoint.

(37) To the use of the said (trustees) their heirs and assigns dur. To trustees to ing the life of my eldest(a) [daughter Mary] B In trust to preserve ing the life of the contingent remainders hereinafter limited and also upon trust eldest [daughter] and pay during the life of my said eldest daughter to pay the yearly rents the rents to issues and profits of the said {manors} and hereditaments unto use. such person or persons and for such intents and purposes as my said daughter whether single or married shall from time to time direct and appoint but not so as to deprive herself of the benefit thereof by anticipation and for want of such direction or appointment into the proper hands of my said daughter for her separate use and benefit independently of any person or persons with whom she may intermarry And I declare the receipt or re- Receipt clause. ceipts of my said daughter whether single or married or of such person or persons as she shall from time to time appoint and direct to receive the said rents and profits shall be a good and sufficient discharge for the same.

(38) And after the decease of my said eldest daughter Toher sons in

tail, and in

Variation for sons.

<sup>(</sup>a) If this limitation is applied to sons, the only alteration will be as to the gender and description.

XCIV. I IMITATIONS OF REAL PRO-PERTY IN FAVOUR OF CHILDREN OF TESTATOR.

default to second daughter in same manner. To trustees during respective lives of testator's second and other daughters to apply rents for their benefit, and remainder tail male.

to the use of the first and other sons of her body severally and successively and one after another according to the respective seniority and priority in birth in tail male.

(39) To the use of the said (trustees) and their heirs during the respective lives of my second daughter and every other subsequently born daughters. In trust to apply the rents and profits of the said estates to the sole and separate use of the said and every other subsequently born daughters successively and according to priority of birth during the term of her natural life and after the respective decease of every such daughter to the use of her respective first and other sons severally successively and according to their respective seniority in tail male to their sons in And in default of such issue

To daughters for life as tenants in common.

(40) To the use of all and every my daughters if there shall be more than one during their respective lives in equal shares as tenants in common without impeachment of waste.

To trustees to preserve contingent remainders of respective shares.

(41) And as to the respective share of all and every of my daughters immediately after the determination of her said respective estate for life therein to the use of the said (trustees) and their heirs during her life in trust for her and by the usual ways and means to preserve the contingent remainders.

Respective share to go to first and other sons of every daughter, and in default of issue as well the original as accruing share shall go

(42) And after her respective decease her respective share to be and remain To the use of the first and other sons successively according to their respective seniorities in tail male And in default of such issue respectively Then and in such case and so often as the same shall happen as well the share or respective shares originally limited to her or them respectively whose issue shall so fail as such other share or shares as by virtue of this present clause shall have become vested in her or them or her or their issue male respectively shall remain and be

to remaining daughters for life as tenants in common.

(43) To the use of the other or others of them my said daughters during her or their life or respective lives in equal shares as tenants in common without impeachment of waste

And immediately after the determination of her respective estate for life therein during her lifetime To the use of the said (trustees) during her respective life and in trust for her and by the usual ways and means to preserve the contingent remainders And after her respective decease the said accruing share or shares to remain and be To the use of her respective first and other sons respectively according to their respective seniorities in tail male And in default of such issue male as aforesaid of all my daugh-Then as to the entirety of the said {manors} and all issue except hereditaments To the use of such one daughter and her assigns for her life without impeachment of waste And immediately after the determination of that estate by forfeiture or otherwise in the lifetime of such one daughter to the use of the said (trustees) and their heirs during the life of such one daughter and by the usual ways and means to preserve the contingent remainders thereinafter limited And after her decease

XCIV. LIMITATIONS OP REAL PRO-PERTY IN PAVOTER OF CHILDREN OF TESTATOR.

To trustees to preserve. Accruingshare to go as original shares, and in default of of one daughter as to entirety. To daughter for life to trustees to pre-

(44) To the use of her first and other sons in tail male.

To sons in tail.

XCV. TRUSTS OF TERM OF YEARS IN FAVOUR OF CHILDREN OF TESTATOR.

### XCV.

# TRUSTS OF TERM OF YEARS IN FAVOUR OF CHILDREN OF TESTATOR.

Trust of term of years to raise portions for younger children.(a)

- (1) Upon trust that they the said (trustees) and the survivor of them and the executors administrators and assigns of such survivor do and shall by sale or mortgage of the said {messuages} hereditaments and premises or any part thereof for the whole or any part of the said term of years or by such other ways and means as they the said (trustees) or the survivor of them and the executors administrators or assigns of such survivor shall think fit.
- (2) Levy and raise for the portion or portions of all (b) and every the child and children (other than or besides the child who under this my will shall for the time being be entitled to the said {messuages} hereditaments and premises in remainder immediately expectant on the said term of years) the sum of pounds of lawful money of Great Britain and Ireland and apply the same in the manner hereinafter mentioned (that is to say) If there shall be but one such child living at my decease the said sum of pounds to be for the portion of that one child and to be paid to such child being a son at his age of twenty-one years or on the day of her marriage under that age

Practical direction.

<sup>(</sup>a) The corresponding clauses in marriage settlements Vol. I. Class IV. XCIV. may here be consulted with advantage.

Power of appointment to the parents or parents.

(b) If there is to be a power of appointment to the parents or parent of the children, see the clauses in Vol. I. XCIV. (3) p. 366, and the subsequent corresponding clauses relating to personalty in this class.

with the consent of her guardian or guardians for the time being which shall first happen And if there shall be two or TRUBIS OF more such children living at my decease then the said sum of IN PAVOUR OF pounds to be for the portions of such two or more children and to be divided between or amongst them in equal shares the share and shares of such of them as shall be a son or sons to be an interest vested or interests vested in him or them respectively at his or their age or respective ages of twenty-one years and if a daughter or daughters at her or their respective ages of twenty-one years or on the day or respective days of marriage under that age with such consent as aforesaid.

XCV. TOTIOTS OF CHILDREN OF TESTATOR.

(3) Levy and raise for the portion or portions of all and every Trust to raise my child and children (other than or besides the child who under the children, this my will shall for the time being be entitled to the said (another {messuages} hereditaments and premises in remainder expectant on the said term of years) the several sums hereinafter mentioned (that is to say) if there shall be one such child only (other than or besides the child so for the time being entitled as aforepounds for his or her portion and if there said) the sum of shall be two such children only (other that or besides the child so for the time being entitled as aforesaid) the sum of pounds for their portions and if there shall be three such children only (other than or besides the child so for the time being entitled as aforesaid) the sum of pounds for their portions (and thus according to the probable number of children) and if there shall be [eight] or more such children (other than or besides the child so for the time being entitled as aforesaid) the sum of pounds for their portions the share and shares if more than one of such of them as shall be a son or sons to be an interest vested or interests vested and to be raised and raisable in him or them respectively at his or their age of twentyone years and if a daughter or daughters at her or their respective ages of twenty-one years or on the day or respective days of marriage under that age with the consent of her and their guardian for the time being and to be paid to him her and them respectively on or at the same ages days or times respectively if the same respectively shall happen after my decease.

XCVI.
PROVISIONS
FOR THE
BENEFIT OF
CHILDREN OF
TESTATOR.

### XCVI.

# PROVISIONS FOR THE BENEFIT OF CHILDREN OF TESTATOR.

Provision for the survivorship and accruer of shares. And in case and so often as any of my child or (a) children [being a younger son] shall depart this life [or being a son shall become an eldest or only son so entitled as aforesaid] before the share hereby intended for him her or them respectively shall have become vested as aforesaid. Then and in every such case as well the share hereby originally provided for the said child or children so dying [or becoming an elder or only son as aforesaid] as the share or shares which by virtue of this present provision shall have survived or accrued to him her or them (b) shall go remain and be to the others or other of the said children and if more than one in equal shares as tenants in common or to the others and other of the said children in like manner as his her or their original share or shares.

Variation.

(a) Or it may be, "of the child or children of my said son or daughter J or M."

Variation.

<sup>(</sup>b) The following words are here sometimes inserted, "or so much thereof as shall not have been previously applied to his or her maintenance advancement or preferment in the world by virtue of the powers or authority hereinbefore contained."

XCVII. PROVISIONS POR THE BENEFIT OF CHILDREN OF TESTATOR.

### XCVII.

Provided always And I do hereby declare that it shall be law- Provision for ful for the said (trustees) or the survivor of them or the executors the mainteadministrators and assigns of such survivor after my decease dren out of the with and out of the rents and profits of the said {messuages} hereditaments and premises comprised in the said term of years to levy raise and apply for the maintenance and education of such of my children for whom a portion is or are hereinbefore intended to be provided as aforesaid in the meantime and until his her or their portion or respective portions shall become payable such yearly sum or sums of money as they or he shall think proper not exceeding in any one year for any one such child what the interest after the rate of five pounds for one hundred pounds of his her or their presumptive portion under the trusts of the said term of years would amount to.

nance of chil-

XCVIII.
PROVISIONS
FOR THE
BENEFIT OF
CHILDREN OF
TESTATOR.

## XCVIII.

Provision for the advancement of children out of the rents.

Provided always And I do hereby declare that it shall be lawful for the said (trustees) and the survivor of them and the executors administrators and assigns of such survivor at any time or times after my decease to raise and levy by the ways and means aforesaid or any of them and to apply for the advancement or preferment in the world or otherwise for the benefit of any of my sons (other than or besides the son for the time being entitled as aforesaid) any sum or sums of money not exceeding in the whole for any one of such sons the moiety or equal half part of his then presumptive portion under the trusts of the said term of years and the same shall be considered and taken as part of the said portion.

XCIX PROVISIONS DOD THE BENEFIT OF CHILDREN OF TESTATOR.

### XCIX.

Provided always And I do hereby declare that the said Provision that (trustees) or the survivor of them or the executors administrators man shall reand assigns of such survivor do and shall (subject to the trusts subject to the aforesaid) permit the rents and profits of the said {messuages &c.} term. years or so much thereof comprised in the said term of as shall remain after answering the trusts and purposes aforesaid to be received by the person or persons who shall for the time being be entitled to the said {messuages &c.} hereditaments and premises in remainder immediately expectant on the determination of the said term.

## CI.

CT.

Provided always And I do hereby declare that when all the Provision for years shall have been performed term. trusts of the said term of or shall become unnecessary or incapable of taking effect and the costs and charges of the said (trustees) and the survivor of their and the executors administrators and assigns of such survivor with the execution of the said trusts shall have been fully satisfied the said term of years in the said {messuage} hereditaments and premises hereinbefore devised or in so much thereof as shall not have been sold or mortgaged for the purposes aforesaid shall cease and determine.

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CII.
PROVISIONS
FOR THE
BENEFIT OF
CHILDREN OP
TESTATOR.

### CII.

Direction that pounds shall be paid to sons or daughters for maintenance until twelve, and pounds after twelve till twenty-one.

And I do hereby direct that the sum of pounds per annum shall be allowed and paid out of the (a) [interest and and dividends of the said trust monies stocks funds and securities] for the maintenance and education of each of my (b) [daughters Mary Emily and Ann] And also the like sum of pounds per annum for the maintenance and education of each and every other [daughter] I may have born hereafter until my said daughters Mary Emily and Ann and my said other [daughters] shall respectively attain the age of twelve years And from and after their respectively attaining the age of twelve years the sum of pounds per annum shall be allowed and paid out of the said interests and dividends for the maintenance and education of each and every of my said daughters until they respectively attain the age of twenty-one years.

Variation for real estate. Variation for sons.

(b) Or, if the direction be in favour of sons, say, "my sons J E and B." And alter the form thus throughout.

<sup>(</sup>a) Or, if real estate be settled, say, "rents and profits of the said {manors &c.}"

CIII: PROVISIONS BENEFIT OF CHILDREN OF TESTATOR.

### CIII.

(1) I do hereby direct that if any person for the time being Accumulation entitled under this my will to the actual possession or to the estate. receipt of the rents and profits of the {manors} and hereditaments hereinbefore devised or any part thereof shall be under the age of twenty-one years [and unmarried] the said (trustees) and the survivor of them and the executors or administrators of such Trustees to survivor shall so long as the person entitled as aforesaid shall be maintenance. under the age of twenty-one years [and unmarried] (but subject and without prejudice to the powers hereinbefore contained and the uses and estates to be created thereby) receive and take the rents and profits of the said {manors} and hereditaments or of such part thereof to which such person shall be entitled and apply a competent part thereof for his [or her] maintenance and education And lay out and invest the residue of the said rents and profits and invest the in the names or name of them the said (trustees) or the survivor residue, of them or the executors or administrators of such survivor on government or real securities in England or Wales and alter and vary the same as occasion shall require so that the same may accumulate in the nature of compound interest And (a) I do and discharge hereby direct that at the end of such period of accumulation or sums charged on the estate. sooner if they the said (trustees) or the survivor of them or the executors administrators and assigns of such survivor think proper shall call in and convert the said accumulated fund into money and apply the same in satisfaction and discharge of the principal sums of money which shall then affect the heredita-

clause for real

apply sums for

<sup>(</sup>a) This part of the clause may be inserted, if applicable to the Practical dicircumstances of the case.

CIII.
PROVISIONS
FOR THE
BENEFIT OF
CHILDREN OF
TESTATOR.

And invest the residue in purchase of lands to be settled to the uses of the will.

ments from the rents of which such accumulations shall have been produced either affecting the said premises at the time of my decease or by virtue of any charge made or to be made thereon by this my will or in pursuance of any of the powers contained in this my will And shall lay out and invest the residue of the said money (if any) in the purchase of freehold or copyhold estates to be situated in England or Wales and shall settle the estates so to be purchased to the uses and in the manner in which I have by this my will devised the hereditaments from the rents and profits of which such accumulations shall have proceeded or as near thereto as the deaths of parties and other circumstances will then admit of But if any such investment shall be made during the continuance of the period of accumulation the rents and profits of the estates so to be purchased shall to the end of the period of accumulation be accumulated in the manner and for the purposes hereinbefore mentioned.

Stand possessed of accumulations upon trusts aforesaid.

(2) And do and shall stand and be possessed of the said accumulations and the stocks funds and securities upon which the same shall be invested and the interest and dividends thereof upon and for such trusts intents and purposes as regard being had to the difference in the nature and quality of the respective estates will best or nearest correspond with the uses trusts intents and purposes hereinbefore expressed of and concerning the said {manors &c.} or as near thereto as circumstances will then admit of. (a)

Accumulation.

<sup>(</sup>a) The above clauses are usually adopted for the purpose of accumulating the rents of real estate. It has been lately decided that accumulations during the minority of an unborn person are void. Haley v. Bannister, 4 Madd. 275. This case was not decided with reference to this form, and it is conceived that it may still be used with safety notwithstanding this case.

CIV. PROVISIONS POR THE BENEFIT OF CHILDREN OF TESTATOR.

### CIV.

Provided always And I do hereby declare that when and so Proviso that often as under the trusts and provisions hereinbefore declared be made to and contained the time shall have arrived for the sale of the said {manors &c.} and hereditaments or any part thereof the mises when said (trustees) or the survivor of them his heirs and assigns shall in the first instance offer for sale to my eldest son (a) R if he shall have attained the age of twenty-one years but if he shall then be under that age then for his benefit to his guardian or guardians for the time being such of the said premises as shall for the time being be about to be sold at such price or value as shall be fixed thereon by two indifferent persons the one to be appointed by the said (trustees) or the survivor of them his heirs and assigns within the space of two calendar months after the said premises shall be about to be sold and the other indifferent person to be appointed by my eldest son R if he shall then have attained the age of twenty-one years but if he shall then be under that age then by his guardian or guardians for the time being within the like space of two calendar months or if such two indifferent persons shall not agree as to the said price or value within the space of four calendar months after they shall both of them have been appointed as aforesaid Then at such price or value as shall be fixed thereon by such person as shall within the space of one calendar month after their disagreement be appointed by the

an offer shall eldest son to purchase prethey are sold.

Variation for other sons.

<sup>(</sup>a) Or, if the offer is to be made to other sons, say, "my eldest or only son for the time being."

CIV.
PROVISIONS
FOR THE
BENEFIT OF
CHILDREN OF
TESTATOR.

two indifferent persons so to be appointed as aforesaid But if my eldest son R or in case of his infancy his guardian or guardians for the time being shall neglect or refuse within the said space of two calendar months to appoint such indifferent person or having within the said space appointed such indifferent person shall within the space of two calendar months after the price or value of the said premises shall have been fixed as aforesaid neglect or refuse to complete the purchase thereof at such price or value then and in any of the said cases the said (trustees) and the survivor of them his heirs and assigns shall under the trusts and provisions for sale hereinbefore contained sell the said premises to any person or persons whomsoever and upon such terms as the said (trustees) or the survivor of them his heirs and assigns shall think proper.

CV. TRIISTS AF PERSONALPTY IN PAVOTE OF CHILDREN AND GRANDCHIL-DREN OF TESTATOS

### CV.

## TRUSTS OF PERSONALTY IN FAVOUR OF CHILDREN AND GRAND-CHILDREN OF TESTATOR.

(1) The said trust monies stocks funds and securities shall Trust for all remain and be in trust for all and every my present and future born child and children and if more than one in equal shares as tenants in common.

the children.

(2) And as to the shares of my son or sons In trust for such son As to shares of or sons his and their executors administrators and assigns respectively for his and their absolute use and benefit.

(3) But in respect to the share or shares of my daughter or (a) daughters who shall at any time or times during their re- ters are spective lives be under coverture In trust (b) to receive the to be for their interest and dividends thereof and pay the same into her or their hands for the sole and separate use of such daughter or daughters free from the debts or control of any husband or husbands with whom she or they may intermarry during such time or times as she or they shall be under coverture And I Their receipts hereby declare that the receipt or receipts of such daughter or to be sufficient discharges.

But if daughmarried, shares separate use.

appointment to their separate use as in p. 212, (17).

<sup>(</sup>a) Or the trust may be declared more fully as ante p. 198, (11). Practical (b) Or a power of appointment to such persons as the daugh-direction. ters may choose, may here be inserted, and in default of their

CV.
TRUSTS OF
PERSONALTY
IN FAVOUR OF
CHILDREN AND
GRANDCHILDREN OF
TESTATOR.

daughters or of such person or persons as she or they shall appoint shall be a sufficient discharge or sufficient discharges for the interest dividends and annual produce which shall become due during her or their coverture or respective covertures in respect of her or their share or respective shares in the said trust monies stocks funds and securities.

The same by reference for the survivorship clause. (4) But in respect to the share or shares of such of the said survivors or survivor being a daughter or daughters who shall at any time or times be under coverture. Upon such trusts for such daughters during such time or times as they or she shall be so under coverture and with such power of giving receipts as are hereinbefore expressed and declared of and concerning the original share or shares of such daughter or daughters.

And after decease of daughter, stock to be in trust. (5) And after the decease of my said daughter the sum of pounds and the stocks funds and securities in which the same shall be invested and the interest and dividends thereof shall remain and be In trust.

If daughter shall have no issue, upon trust to pay moiety as daughter shall appoint, and in default, in trust for such persons as are entitled under the statute of distributions.

(6) And if my said daughter Mary B (a) shall have no child of her body who under the trusts aforesaid shall become entitled to the said sum of pounds and the stocks funds and securities on which the same shall be invested then upon trust to pay transfer and assign one moiety or equal half part thereof unto such person or persons as my said daughter Mary B shall by any deed (b) or will appoint And in default of such direction or appointment and so far as such direction or appointment if incomplete shall not extend In trust for the person or persons who under the statutes for the distribution of intestate's effects would be entitled thereto if she had died possessed thereof and unmarried and to be divided between or among the

Variation.

Practical direction.

(b) Or this may be stated more particularly as in p. 191. (30).

<sup>(</sup>a) Or it may be, "if none of my said daughters shall have a child of her body who, &c."

said persons respectively and if more than one in the shares in which the same would be divisible under the said statutes do and shall stand possessed of and interested in the other IN PAVOUR OF moiety of the said sum of pounds and the stocks funds and securities on which the same shall be invested In trust

CV. TRIMITE OF PERSONALTY CHILDREN AND GRANDCHIL-DREN OF TESTATOR.

(7) And I hereby direct that if none of my children for grandchildren shall under the trusts hereinbefore declared become If no child entitled to or interested in the said trust monies and the stocks funds and securities upon which the same shall be invested monies to [and the accumulations thereof] then after such failure of issue as aforesaid the same shall

And sa to the other moiety shall be entitled, trust

(8) Sink into and form a part of the residue of my personal sink into reestate.

sidne.

(9) Remain and be in trust for AB his executors admi- To go to AB nistrators and assigns for his and their absolute use and benefit.

(10) And in case none of my children who being a son or sons shall attain the age of twenty-one years or being a daughter shall attain that age or marry with such consent as aforesaid trust monies then the said trust monies stocks funds and securities shall remain and be

If no child shall attain a certain age, shall be

(11) In trust for all and every my daughters or daughter who intrust for shall attain the age of twenty-one years or marry under that age with the consent of her guardian for the time being.

(12) In trust for all my present four children and such child or children as I may have hereafter to be divided equally between them And in case of any of their deaths under the age of twentyone years and unmarried Then as to the share or shares as well surviving and accruing as original of such of them as shall so die under the age of twenty-one years and unmarried In trust for go to the surthe survivors or survivor or others and other of them.

In trust for all testator's children at twenty-one or marriage, and if any die under that age their share to VIVORE

(13) In trust for all and every my present and future born in trust for

CV.
TRUSTS OF
PERSONALTY
IN FAVOUR OF
CHILDREN AND
GRANDCHILDREN OF
TESTATOR.

the younger children equally, and if but one child to that one.

children and child [(a) other than and except my son for the time being entitled under the limitations hereinbefore contained to the {messuages &c.} hereinbefore devised] who being a son or sons shall attain the age of twenty-one years or being a daughter or daughters shall attain the age of twenty-one or marry under that age with the consent of heror their guardian or guardians for the time being And to be divided between or amongst them if more than one in equal shares as tenants in common And if there shall be but one such child then the whole to be In trust for that one child.

In default of such issue,

(14) And in default of such issue

to eldest son.

(15) In trust for my son who under the limitations hereinbefore contained shall become absolutely entitled to the said {messuages &c.} hereinbefore devised.

Practical direction.

(a) This will of course be omitted if no real estate be settled.

CVI. TRUSTS OF PERSONALTY IN FAVOUR OF CHILDREN AND GRANDOUR -DREN OF TESTATOR.

### CVI.

(1) In trust for all and every such one or more exclusively of the Trusts of a other or others of the children [or grand-children] of the said A B for the benefit (a) [born in his life time] in such shares if more than one and as parents with such provisions for their respective maintenance education shall appoint. and advancement and with such restrictions and in such manner as the said AB (b) shall by deed or will direct or appoint (c) and in default of such direction or appointment and so far as any and in default such if incomplete shall not extend

ment.

(2) In trust for all and every the child and children of the in trust for all said AB (a) now born or hereafter to be born who being a son or sons shall attain the age of twenty-one years [or die under that age leaving issue of his or their body] or being a daughter or daughters shall attain the said age or marry under that age with the consent of her or their [parent or parents or] guardian or guardians for the time being to be equally divided between or amongst them if more than one in equal shares as tenants in common And if there shall be but one such child the whole to be in trust for that one or only child.

(3) Provided (d) always and I hereby direct that no child Appointed taking under any appointment to be made in exercise of the brought into said power shall be entitled to any share of the unappointed part

botchpot.

<sup>(</sup>a) Or, "my children," or "children of my body," and the Variations. alteration must of course be continued throughout.

<sup>(</sup>b) Or, "my daughter Mary B" or "my respective daughters."

<sup>(</sup>c) Or this may be given more particularly as in p. 191, (30) Practical And see Longford v. Eyre, 1 P. Wms. 739.

<sup>(</sup>d) The clauses in marriage settlements, Vol. I. Class IV. corresponding to these, may here be advantageously consulted.

CVI.
TRUSTS OF
PERSONALTY
IN FAVOUR OF
CEILDREN AND
GRAND-CHILDREN OF
TESTATOR.

of the said sum of pounds and the stocks funds and securities thereof without bringing his her or their appointed share into hotchpot and distribution with the other child or children and accounting for the same accordingly.

Provision for the survivorship and accruer of shares.

(4) And in case and so often as any of the children of the said AB (a) who being a son or sons shall die under the age of twenty-one years or being a daughter or daughters shall die under that age without having been married with the consent in writing of her or their respective guardian. Then and in every such case as well the share or shares hereby originally provided for the said child or children so dying or marrying as the share or shares which shall have survived or accrued to him her or them by virtue of this present provision shall go remain and be to the others or other of the said children and if more than one in equal shares as tenants in common. (b)

Survivorship clause. (a) See note (a) ante p. 249.
(b) The survivorship clause is quite unnecessary when a time is fixed for the vesting of the shares, as ante (2).

CVII. TRUSTS OF PERSONALTY IN PAVOUR OF CHILDREN AND GRAND-CHIL-DREN OF TEST ATOR.

# CVII.

Provided always and I do hereby further declare that [after Provision for the (a) decease [or marriage] of the said A B [or my said wife] the maintenance and eduand] during such time as the said children or any of them being cation of the children. a son or sons shall be under the age of twenty-one years or being a daughter or daughters shall be under the said age and unmarried the said trustees or trustee for the time being shall appropriate all or a competent part of the interest and dividends of the share to which such child or children shall be for the time being entitled under the trusts and provisions hereinbefore declared and contained for or towards his her or their maintenance education or otherwise for his or her benefit.

Variation.

<sup>(</sup>a) Or it may be, "after my decease." See ante, p. 249, n. (a)

CVIII.
TRUSTS OF
PERSONALTY
IN FAVOUR OF
CHILDREN AND
GRAND-CHILDREN OF
TESTATOR.

#### CVIII.

Provision for the advancement of the children. Provided always And I do hereby further declare that it shall be lawful for the said trustees or trustee for the time being at any time or times [during the life [or widowhood] of the said A B or my said wife with her consent and after her decease [or marriage]] at their or his discretion to raise and apply the whole (a) or any part of the share or shares to which the said child or children shall for the time being be entitled under the trusts and provisions hereinbefore declared and contained for or towards his her or their preferment advancement or benefit.

Variation.

<sup>(</sup>a) Or it may be,
"any part or parts not exceeding one-half of the share or shares
to which, &c."

CIX. TRIBER OF PERSONALTY IN PAVOTER OF CHILDREN AND GRAND-CHIL-DREN OF TESTATOR.

### CIX.

Provided always And I do hereby further declare that until Accumulation clause for perthe whole of the said trust monies stocks funds and securities sonalty. shall become vested in such child or children the said trustees or trustee for the time being shall receive the interest and dividends of the said sum of pounds and the stocks funds and securities thereof or such part thereof as shall be unapplied and undisposed of under or by virtue of the trusts or provisions hereinbefore declared and lay out and invest the same in his or their names or name in (a) any of the stocks funds and securities hereinbefore mentioned so that the same may accumulate in the way of compound interest and shall and may from time to time alter and vary the accumulations for the time being made into other stocks funds and securities of the like nature at their and his discretion and at the end of the period hereby limited for such accumulations the said trustees or trustee for the time being shall stand and be possessed of the said trust monies and the accumulations which shall have been made and the stocks funds and securities in which the same shall have been invested and the interest and dividends thereof Upon and for the same trusts intents and purposes and with under and subject to such and the same powers provisoes and declarations as are hereinbefore expressed and declared of and concerning the fund from which such accumulations shall have proceeded.

Variation.

<sup>(</sup>a) Or if no stocks have been mentioned. " in the parliamentary stocks or public funds of Great Britain."

CX.
TRUSTS OF
PERSONALTY
IN FAVOUR OF
CHILDREN AND
GRAND-CHILDREN OF
TESTATOR.

CX.

Proviso for maintenance (very short.)

(1) And I hereby direct that after the decease of the said A B the said trustees or trustee for the time being shall and may pay or apply all or any part of the interest and dividends of the portion or portions of any of the children of the said A B whose portion or portions shall not be vested for his her or their maintenance and education.

Proviso for advancement (very short.)

(2) And also that after the decease of the said A B the said trustees or trustee for the time being shall and may but if in her lifetime with her consent in writing advance all or any part of the portion or portions of any of the children of the said A B whose portion or portions shall not be vested for or towards his her or their advancement or benefit.

CXI. -PERSONALTY IN PAVOTE OF CHILDREN AND GRAND-CHIL-DREM OF TESTATOR

#### CXI.

Provided always And I do hereby further declare that in the Provision for mean time and until the portions hereby provided for my chil-nanceand edudren shall become vested in them respectively under the trusts cation of chilhereinbefore declared the said trustees or trustee for the time interest of being do and shall pay and apply the whole or so much as the said trustees or trustee for the time being shall think necessary of the interest and dividends of the portion or portions which shall for the time being not have become vested as aforesaid for or towards the maintenance education and support or otherwise for the benefit of the child or children for the time being entitled in expectancy to such portion or portions respectively and do and shall accumulate in their or his names or and accumuname in any of the stocks funds and securities hereinbefore residue. mentioned so much of the said interest and dividends as shall not be required for maintenance education and benefit as aforesaid And do and shall from time to time alter vary and trans- and invest and pose the said last-mentioned stocks funds and securities for or rities, into other stocks funds and securities of the like nature at their or his discretion. And the said trustees or trustee for the time and stand posbeing shall stand and be possessed of the accumulations to be so accumulations made upon and for such and the same trusts intents and purposes as are in and by this my will expressed and declared of declared of the fund out of and concerning the fund or funds from which such accumula- which the actions shall have proceeded or as near thereto as the deaths of are to proceed. the parties and other circumstances will permit.

dren out of the their shares.

sessed of the

CXII. TRUSTS OF PERSONAL TV IN FAVOUR OF CHILDREN AND GP AND-CHIL-DREN OF TESTATOR.

#### CXII

Proviso for the maintenance of single child.

(1) Provided always And I hereby further declare that in case my said [(a)] son shall at the time of my decease (b) be under the age of twenty-one (c) the said (trustees) and the survivor of them his executors and administrators shall appropriate all or a competent part of the interest and dividends of the said trust monies stocks funds and securities for or towards [his] maintenance and education or otherwise for his benefit.

Provision for the advancement of single child.

(2) Provided always And I hereby further declare that it shall be lawful for the said (trustees) or the survivor of them his executors and administrators at any time or times [during the life of my said wife with her consent and after her decease] at their or his discretion to raise and apply from and out of the said trust monies stocks funds and securities any sum not exceeding pounds for or towards (d) the preferment advancement or benefit of my said son.

Variation for daughter.

(a) If the provision be for a daughter, alter this to "daughter."

Wife.

(b) If intended, say,

Variation for daughter.

(c) If a daughter, say, "and unmarried."(d) If the provision be for a daughter, say, " for or towards the marriage portion of my said daughter, if she shall marry with the consent of her guardians or guardian for the time being."

"at the time of my said wife's decease."

CXIII. TRUSTS OF PERSONALTY IN PAVOUR OF CHILDREN AND GRAND-CHIL-DREN OF TESTATOR

#### CXIII.

Provided always And I do hereby direct that in the mean- Provise that time and until a sufficient part of the trust monies which shall come to the hands of my said trustees by the ways and means trust monies aforesaid shall be laid out or invested in pursuance of the trusts and directions hereinbefore contained my said trustees and the pay wife's ansurvivor of them his executors and administrators shall and may by and out of the monies which shall come to their hands by the ways and means aforesaid pay and satisfy the said annual of the sums in their hands. sum of pounds to my said wife or her assigns and advance and pay the said sums of money which my said trustees are hereinbefore authorized or directed to advance or pay for the maintenance and education of my said children and for the preferment and advancement of my said sons.

till a sufficient part of the are invested. trustees shall nuity and children's maintenance and advancement out CXIV
TRUSTS OF
PERSONALTY
IN FAVOUR OF
CHILDREN AND
GRAND-CHILDREN OF
TESTATOR.

#### CXIV.

Trust of a second sum to investand vary (short.)

(1) Upon trust that they the said (trustees) or the survivor of them or the executors administrators and assigns of such survivor. Do and shall lay out and invest the same in their or his names or name in any of the stocks funds and securities hereinbefore mentioned. And do and shall with the consent in writing of the said Mary B during her life and after her decease at their or his discretion alter and vary the said last-mentioned sum of pounds into other stocks funds and securities of a like nature.

And stand possessed thereof upon the same trusts for the benefit of the children of M B as have been already declared in favour of the children of Jane B. (a)

(2) And the said (trustees) or the survivor of them or the executors administrators and assigns of such survivor do and shall stand and be possessed of the said last-mentioned sum of pounds and the stocks funds and securities in which the same shall be invested and the interest and dividends thereof upon and for such and the same trusts intents and purposes and with under and subject to such and the same powers provisoes and declarations in favour or for the benefit of the said Mary B and her children or child respectively as are hereinbefore declared in favour of the said Jane B and her children or child respectively of and concerning the said sum of pounds hereinbefore given to and for the benefit of the said Jane B and her children or child respectively and the stocks funds and securities in which the same shall be invested and the interest and dividends thereof.

<sup>(</sup>a) It is proper to notice that this form, with some trifling difference, is also given in Mr. Worthington's useful little work, p. 252. It is taken from a will, drawn by an eminent living conveyancer.

CXV. TRUSTS OF PERSONALTY IN FAVOUR OF CHILDREN AND CD AND CHIL. DREN OF TESTATOR.

# CXV.

(1) And after the decease of my said daughter Mary B do Trusts for the and shall pay the said last-mentioned sums (or interest and dividends which shall become payable after her decease) unto and equally between all and every the children and child of the said Mary B who shall be living at the time of her decease and the issue of such of her children as shall have died in her lifetime leaving issue him her or them surviving such issue to take the share only to which his her or their parent or parents would have been entitled if such parent or parents had been living at the time of the decease of my said daughter Mary B and if more than one in equal shares as tenants in common.

daughter and their issue.

(2) And in case my said daughter Mary B shall have no And if no child child or other issue living at the time of her decease then to the daughter as executors administrators or assigns of the said Mary B as part of her personal estate.

personal estate.

CXVI.
TRUETS OF
PERSONALTY
IN FAVOUR OF
CHILDREN AND
GRAND-CHILDREN OF
TESTATOR.

#### CXVI.

If there shall be no child, then the sum to be (1) And I do hereby further declare that if there shall be no child of the said A B or being such he she or they shall depart this life before the share hereby intended for him her or them shall become vested in him her or them respectively. Then the said sum of pounds and the stock funds and securities in which the same shall be invested and the interest and dividends thereof, shall remain and be

Upon the same trusts as are declared of another sum. (2) Upon and such and the same trusts intents and purposes and with under and subject to such and the same powers provisoes and declarations as are hereinbefore expressed and declared of and concerning the said sum of pounds hereinbefore given and bequeathed to or for the benefit of the said C B.

CXVII.

# CXVII.

Proviso for double portion to eldest or only son. Provided always nevertheless that the eldest or only son of the said A B (a) shall have double the portion of any other child any thing in this my will contained to the contrary notwithstanding.

<sup>(</sup>a) See ante p. 249, n. (a.)

CXVIII. TRUETC OF PERSONALTY IN PAVOUR OF CHILDERN AND CRAND-CHILDREN OF TESTATOR.

#### CXVIII.

(1) And I hereby further declare that if any of my daugh- Proviso that if ter or daughters being under the age of twenty-one years shall shall marry marry without the consent of her or their guardian (a) or guar- without consent, trustees dians for the time being then and in every such case they the said shall stand (trustees) and the survivor of them and the executors administrators and assigns of such survivor shall thenceforth stand and be possessed of and interested in the portion or portions to which such daughter or daughters would if she or they had obtained her or their age or respective ages of twenty-one years without having been married either originally or by survivorship or accruer have thereupon become entitled upon the trusts (b) hereinafter expressed of and concerning the same (that is to say)

(2) In trust for all and every my other child or children In trust for who being a son or sons shall attain the age of twenty- dren. one years or being a daughter or daughters shall attain that age or marry with such consent as aforesaid to be divided between or amongst them if more than one in equal share and proportions and if there shall be but one such other child then the whole to that one child.

(a) A marriage in the lifetime of the testator with his con-Marriage consent will satisfy this condition; it need not therefore be alluded to dition. in it. See Crommelin v. Crommelin, 3 Ves. 227. Parnell v. Lyon, 1 Ves. and Bea. 479.

(b) The portion thus divested on a marriage without consent, Practical should always be bequeathed over, or the condition will be consi-direction. dered merely in terrorem and be void, Bellasis v. Ermine, 1 Ch. Ca. 22. Marples v. Bainbridge, 1 Madd, 590. A bequest over to increase the surplus is, however, sufficient, Amos v. Hamer. Eq. Cas. Abr. 112.

CXVIII.
TRUST OF
PERSONALTY
IN FAVOUR OF
CHILDREN
AND GRANDCHILDREN OF
TESTATOR.

For her separate use.

And after ber decease to her children.

(3) Upon trust that they the said (trustees) and the survivor of them and the executors administrators and assigns of such survivor do and shall during the respective life and lives of such daughter or daughters so marrying without consent as aforesaid pay the interest and dividends of the portion or portions to which she or they would have been entitled as aforesaid to such person or persons and for such intents and purposes as my said daughter or daughters shall from time to time whether single or married direct or appoint (but not so as to deprive herself or themselves of the benefit thereof by anticipation) and for want of such direction or appointment into their proper hands for their respective separate use and benefit exclusively of any person or persons with whom they may respectively intermarry And I declare that the receipt or receipts of my said daughters whether single or married or of such person or persons as they shall from time to time direct or appoint to receive the said interest and dividends shall be a good and sufficient discharge or good and sufficient discharge for the same And after the decease of any such daughter or daughters respectively do and shall pay transfer and assign the portion or portions to which such daughter or daughters would have become entitled as aforesaid to all and every the child and children of her body who being a son or sons shall attain the age of twenty-one years or being a daughter or daughters shall attain that age and marry with such consent as aforesaid to be divided between or amongst them if more than one in equal shares and proportions and if there shall be but one such other child then the whole to that one child.

And if no children, to testator's children in the same manner as their original shares.

(4) And if my said daughter or daughters so marrying as aforesaid shall have no such child in trust for all and every the child and children of my body and to be divided between and amongst them in the same shares and proportions and to be attended with the same provisions for maintenance and advancement and to be subject to the same trusts in favour of any such daughter or daughters so marrying without consent as aforesaid and the children of such daughter or daughters as are hereinbefore expressed and declared with respect to the portions hereinbefore firstly provided for my said children.

CYIY TRUST OF PERSONALTY IN PAVOID OF CHILDREN AND GRAND-CHILDREN OF TESTATOR.

#### CXIX.

Provided always And I do hereby further declare that not with. Power to standing any of the trusts hereinbefore declared it shall be lawful to appoint the for each and every of my daughter or daughters at any time or share to her times whether before or after marriage by any deed or deeds to be husband. by her sealed and delivered in the presence of and attested by two or more credible witnesses or by her last will and testament in writing or any codicil thereto or any writing in the nature of her last will and testament to be by her signed and published in the presence of and attested by three or more credible witnesses to appoint and direct that the whole or any part of the interest dividends and annual produce of her respective share of and in the said trust monies stocks funds and securities shall after her decease be paid to any husband whom she may marry surviving her and his assigns for his life.

<sup>(</sup>a) This provision may be easily adapted to a power for sons Variation for to appoint the interest of their shares to their wives, by the alteration of the gender, and the substitution of "son and sons." for "daughter and daughters," and "wife" for "husband."

CXX.
TRUSTS OF
PERSONALTY
IN PAVOUR OF
CHILDREN
AND GRANDCHILDREN OF
TESTATOR.

#### CXX.

Proviso that if any child shall marry and die in testator's lifetime, leaving issue, such issue shall have child's share.

Provided always And I do hereby declare that if any of my children who if he or she had survived me and attained the age of twenty-one years or married before that age with such consent as aforesaid would under the trusts hereinbefore declared pounds have become entitled to concerning the said sum of a portion thereof shall depart this life in my lifetime leaving issue of his or her body living at my decease then and in every such case such issue who being a son or sons [grandson or grandsons] shall attain the age of twenty-one years or being a daughter or daughters [grand-daughter or grand-daughters] shall attain that age or marry shall be entitled to the same share or respective shares as well original as surviving and accruing in the said trust monies stocks funds and securities and the same benefit and advantage of maintenance and advancement and in the same manner as he she or they would have taken if his her or their parent or respective parents had survived me and subsequently departed this life.

CXXI. TRUSTS OF PERSONALTY IN PAVOUR OF CHILDREN AND GRAND-CHILDREN OF TESTATOR.

### CXXI.

Upon trust to receive the rents and profits of the said {mes- Trust to accusuages} and hereditaments during the term of twenty-one years rents and proto be computed from my decease and do and shall from time for twenty-one to time lay out and invest the same upon the parliamentary years. stocks or public funds of Great Britain or upon real securities in England or Wales and alter and vary the same as occasion may require and do and shall accumulate the same and the interest and dividends thereof for and during the said term of twenty-one years And do and shall stand possessed of and interested in the said rents and profits and the stocks funds and securities on which the same shall be so laid out and invested and the interest and dividends thereof upon the trusts hereinafter mentioned.

mulate the

CXXII.
TRUST OF
PERSONALTY
IN FAVOUR OF
CHILDREN
AND GRANDCHILDREN OF
TESTATOR.

## CXXII.

Trusts to accumulate for twenty-one years. (a)

(1) Upon trust that they the said (trustees) and the survivor of them and the executors administrators and assigns of such survivor shall as soon as conveniently may be after my decease lay out and invest the said sum of pounds upon the parliamentary stocks or public funds of Great Britain or upon real securities in England and alter and vary the same as occasion may require and do and shall accumulate the same and the interest and dividends thereof for and during the space of twenty-one years to be computed from my decease And do and shall stand possessed of and interested in the said sum of pounds and the stocks funds and securities upon which the same shall be so laid out and invested and the interest dividends and accumulations thereof upon the trusts hereinafter mentioned (that is to say)

In trust that when any child of son (2) In trust that when and as soon as any child (b) of my son R shall during the said period of accumulation attain his

Time of accu-

(a) Since the 40th of Geo. III. c. 98. no accumulation either of real or personal property, can be for a longer period than twenty-one years and the usual period of gestation, except for the payment of debts, portions for the children of any person taking under any such devise, and provisions relating to timber or heritable property in Scotland.

Variation for sons, &c.

<sup>(</sup>b) Or it may be, "any of my children or grandchildren shall"

<sup>&</sup>quot;my eldest son A B shall"

or her age of twenty-one years they the said (trustees) and the survivor of them and the executors administrators and assigns of such survivor shall levy and raise the sum of abanoa from and out of the said sum of pounds and the stocks funds and securities upon which the same shall be invested and the interest dividends and accumulations thereof and pay the shall attain the said sum of pounds to such child of my said son R for his or her use and benefit.

CXXII. TRUST OF PERSONALTY IN PAVOUR OF CHILDOWS AND GRAND. CHILDREN OF TESTATOR.

age of twentyone, to raise a sum for its benefit,

(3) And at and in the same time and manner respectively and raise when and as soon as any other child or children of my said son R (a) shall attain the age of twenty-one years during the said pe-children as riod of accumulation levy and raise the like sum and sums of twenty-one. pounds and pay the same to such child or children for his be exhausted. her or their use and benefit until the whole of the said sum of pounds and the stocks funds and securities upon which the

same shall be invested and the interest dividends and accumula-

tions thereof shall be exhausted.

tain the said age of twenty-one years.

other sums for the other they attain until sum shall

(4) But if the children of my said son R who shall attain the But if the age of twenty-one years during the said period of accumulation be exhausted pounds and the riod, the resishall not exhaust the whole of the sum of stocks funds or securities upon which the same shall be invested and the interests dividends and accumulations thereof by the payment of the respective sums or sum of pounds as aforesaid then and in such case the residue of the said sum of pounds stocks funds securities interest dividends and accumulations after the payment of the said sums or sum of pounds as aforesaid shall remain and be In trust for such of the child or children of my said son R as shall during the said period of accumulation at-

sum shall not during the pedue to go to such children as shall attain twenty-one.

(5) And also do and shall during the minorities of my children Trust to raise

the sum of

<sup>(</sup>a) Or it may be, "any other of my sons or children," or "my sons AB and C B and my daughters T B and L B."

CXXII.
TRUSTS OF
PERSONALTY
IN PAVOUR OF
CHILDREN
AND GRANDCHILDREN OF
TESTATOR.

pounds during the minority of children, and pay it to wife for their maintenance and education: and until they shall respectively become entitled to their his or her portions or portion under the trusts hereinbefore declared (and subject to the said sum of pounds to my said wife as hereinbefore is mentioned) levy and raise the annual sum of pounds for each and every of my said children who shall for the time being be under the age of twenty-one years And do and shall during the life of my said wife pay the several sums or sum of

pounds so to be raised and levied from time to time to my said wife or her assigns by four equal quarterly payments in every year the first quarterly payment thereof to be made at the expiration of three calendar months next after my decease And I hereby direct that my said wife shall with and out of the sums and sum of pounds so to be raised and levied from time to time maintain support and educate all and every my said children and child during their his or her respective minorities according to the best of her judgment and discretion.

CXXIII. TRUSTS OF PERSONALTY IN PAYOUR OF CHILDREN AND GRAND-CHILDREN OF TESTATOR.

#### CXXIII.

(1) In trust for all the child and children of my body and if In trust for all more than one in equal shares as tenants in common for and for their lives. during the life and lives of such child and children respectively

(2) And from and immediately after the decease of any of my and after their said children as to his her or their share or shares of and in the their respecsaid trust monies stocks funds and securities

decease, as to tive shares.

(3) In trust for all the child and children of his her or their In trust for body or bodies respectively who being a son or sons shall attain respectively. the age of twenty-one years or being a daughter or daughters shall attain that age or marry and if more than one to be equally divided among them as tenants in common.

their children

(4) Provided always And in case any of my said children Provision for shall depart this life without leaving a child or children who ship of shares under the trusts aforesaid shall become entitled as aforesaid then and in such case as well the share or shares hereby originally and their chilprovided for my said child or children so dying without leaving a child or children as the share or shares which shall have survived or accrued to him her or them by virtue of this present provision shall go remain and be to the others or other of my said children and his her or their children respectively for the same interest and respective interests and in the same manner as his her or their original share or respective shares is or are hereinbefore limited in trust for him her or them respectively.

in favour of the children

CXXII.
TRUSTS OF
PERSONALTY
IN PAVOUR OF
CHILDREN
AND GRANDCHILDREN OF
TESTATOR.

pounds during the minority of children, and pay it to wife for their maintenance and education: and until they shall respectively become entitled to their his or her portions or portion under the trusts hereinbefore declared (and subject to the said sum of pounds to my said wife as hereinbefore is mentioned) levy and raise the annual sum of pounds for each and every of my said children who shall for the time being be under the age of twenty-one years. And do and shall during the life of my said wife pay the several sums or sum of pounds so to be raised and levied from time to time to my

said wife or her assigns by four equal quarterly payments in every year the first quarterly payment thereof to be made at the expiration of three calendar months next after my decease And I hereby direct that my said wife shall with and out of the sums and sum of pounds so to be raised and levied from time to time maintain support and educate all and every my said children and child during their his or her respective minorities according to the best of her judgment and discretion.

CXXIII. TRUSTS OF PERSONALTY IN PAYOUR OF CHILDREN AND GRAND-CHILDREN OF TESTATOR.

#### CXXIII.

(1) In trust for all the child and children of my body and if In trust for all more than one in equal shares as tenants in common for and for their lives. during the life and lives of such child and children respectively

(2) And from and immediately after the decease of any of my and after their said children as to his her or their share or shares of and in the their respecsaid trust monies stocks funds and securities

decease, as to tive shares.

(3) In trust for all the child and children of his her or their In trust for body or bodies respectively who being a son or sons shall attain respectively. the age of twenty-one years or being a daughter or daughters shall attain that age or marry and if more than one to be equally divided among them as tenants in common.

their children

(4) Provided always And in case any of my said children Provision for shall depart this life without leaving a child or children who ship of shares under the trusts aforesaid shall become entitled as aforesaid then and in such case as well the share or shares hereby originally and their chilprovided for my said child or children so dying without leaving a child or children as the share or shares which shall have survived or accrued to him her or them by virtue of this present provision shall go remain and be to the others or other of my said children and his her or their children respectively for the same interest and respective interests and in the same manner as his her or their original share or respective shares is or are hereinbefore limited in trust for him her or them respectively.

in favour of the children

CXXVII. TRUSTS OF PERSONALTY IN PAVOTED OF CHILDREN AND GRAND-CHILDREN OF TESTATOR.

### CXXVII.

Provision that if any of the sons shall die hefore they attain twentyfive, shares in the trust monies shall be

In trust for his issue as he shall appoint.

of appointment. In trust for the issue at twenty-one, or if daughters, at twenty-one or marriage.

Provided nevertheless if any one or more of my sons shall depart this life under the age of twenty-[five] years leaving issue of his or their body or respective bodies him or them surviving then and in every such case as well the original as the surviving or accruing share or shares to which each son so dying would have been entitled of and in the said trust monies stocks funds and securities under the trusts hereinbefore mentioned if he or they respectively had lived to attain the age of twenty-[five] vears shall remain and be In trust for all and every or such one or more exclusively of the others or other of the issue of such son with such provision for their respective maintenance education and advancement and in such shares if more than one and with such restrictions and in such manner as such son shall by any deed or deeds or by his last will and testament in writing or any codicil thereto from time to time And in default appoint (a) And in default of such appointment and so far as any such appointment if incomplete shall not extend In trust for all and every the issue of such son who being a son or sons shall attain the said age of twenty-one years and being a daughter or daughters shall attain the said age of twenty-one years or marry under the said age with the consent of her or their parent or parents guardian or guardians for the time being to be divided between or amongst them if more than one in

Power to infant.

<sup>(</sup>a) If the share be given to the children on their parents' dying before twenty-one, the power of appointment should be omitted, and the share given absolutely to the children, as it is questionable, at the least, whether an infant can execute a collateral power over either real or personal property. See *Hearle* v. *Greenbank*, 3 Atk. 695. 1 Ves. 298. Sugd. Pow. 162. 164.

equal shares as tenants in common. And if there shall be but one such child or grandchild then the whole of such share or shares shall be in trust for that one or only child or grandchild IN PAYOUR OF And if the child or all the children and grandchildren of my said son so for the time being dving under the age of twenty-[five] years shall depart this life before the share or shares of his her or their parent of and in the said trust monies stocks funds shall be no and securities shall have become vested in him her or them re- shall be spectively under the trusts hereinbefore declared then and in such case such share or shares shall be and remain.

CXXVII. TRUSTS OF PERSONALTY CHILDDAN AND GRAND-CHILDREN OF TESTATOR.

And if there issue, the share

(2) In trust for all and every my surviving children and child in trust for all who being a son or sons shall attain the age of twenty-ffive dren. years and being a daughter or daughters shall attain the age of twenty-[one] years or marry under that age with such consent as aforesaid And to be divided between or amongst them if more than one in equal shares as tenants in common there shall be but one such surviving child then the whole of such share or shares shall be In trust for that one child.

(3) Provided always nevertheless that as well the original as Provision that the surviving or accruing share or shares of every of my daughters in the said trust monies stocks funds and securities under the their separate trusts hereinbefore and hereinafter declared shall upon her or their attaining the age of twenty-one years or marrying under that age with consent as aforesaid be and remain upon trust that they the said (trustees) or the survivor of them his executors and administrators do and shall during the life of every such daughter pay the interest and dividends of her said share or shares into her own hands or to such person or persons as she whether covert or sole shall by any writing under her hand from time to time appoint to the intent that the same may be for her separate use and not subject to the debts control or interference of any husband whom she may marry And the receipt or receipts of every Their receipts such daughter for the said interest and dividends or of the person or persons whom she shall appoint to receive the same shall whether she shall be covert or sole be an effectual discharge or effectual discharges for the money therein mentioned and ac-

to be valid

CXXVII.
TRUSTS OF
PERSONALTY
IN PAVOUR OF
CHILDREN
AND GRANDCHILDREN OF
TESTATOR.

And after their decease, their shares to go to their issue as they shall appoint, and in default of appointment, to all the children equally.

knowledged to be received And from and immediately after the decease of every such daughter her said share or shares shall be and remain. In trust for all and every such one or more exclusively of the others or other of her children in such shares if more than one and with such provisions for their respective maintenance education and advancement and with such restrictions and in such manner as such daughter shall by deed or will appoint and in default of such appointment and so far as any such if incomplete shall not extend In trust for all and every the child and children of such daughter who being a son or sons shall attain the age of twenty-one years for die under that age leaving issue of his or their body or being a daughter or daughters shall attain the said age or marry under that age with the consent of her or their parent or parents or guardian or guardians for the time being to be equally divided between or amongst them if more than one in equal shares as tenants in common And if there shall be but one such child the whole to be for that one or only child.

And if daughters shall die without issue, their shares to go to the surviving children. (4) And if any one or more of my said daughters shall depart this life without ever having had any issue in whom the share or shares of his her or their parent or respective parents of and in the said trust monies stocks funds and securities shall vest under the trusts hereinbefore declared. Then and in every such case the said share or shares of every of my said daughters whose issue shall so fail shall be and remain. In trust for all and every my surviving children and child who being a son or sons shall attain the age of twenty-[five] years or being a daughter or daughters shall attain the age of twenty-[one] years or marry under that age with such consent as aforesaid. And to be divided between or amongst them in equal shares as tenants in common. And if there shall be but one such surviving child then the whole of such share or shares shall be. In trust for that one child.

CXXVIII. TRIETS PAR RROTHERS AND SIGTERS OF TESTATOR.

### CXXVIII.

#### TRUSTS FOR RROTHERS AND SISTERS OF TESTATOR.

(1) And if I shall leave no child who being a son shall attain And if no the age of twenty-one years or being a daughter shall attain monies to go that age or be married under that age [with such consent as sisters aforesaid! Then the said trust monies stocks funds and securities and the interest and dividends thereof shall remain and be In trust for my brothers CB TB and EB and my sisters FC and RC respectively in equal shares as tenants in common.

(2) Provided nevertheless that if any one or more of my brothers or sisters shall depart this life before me and shall leave no issue of his her or their body or respective bodies who being a son or sons shall attain the age of twenty-one years or being a brothers and daughter or daughters shall attain the said age of twenty-one years or marry under that age with the consent of his her or their parent or parents or guardian or guardians for the time being Then and in every such case as well the share hereinbefore originally limited to my brother or sister so for the time being dving and whose issue shall so fail as aforesaid of and in the said trust monies stocks funds and securities as the share or shares which by virtue of this present clause would have survived or accrued to such brother or sister of and in the same trust monies stocks funds and securities if he or she had survived me shall remain and be In trust for the survivors or survivor of my said brothers and sisters and if more than one in equal shares as tenants in common.

Shares of broters without issue, to go to the surviving

CXXVIII.
TRUSTS FOR
BROTHERS AND
SISTERS OF
TESTATOR.

Proviso that if brothers and sisters die in testator's lifetime leaving issue, then share shall go to the issue.

(3) Provided nevertheless that if any one or more of my brothers and sisters shall depart this life before me leaving a child or children of his or their body or respective bodies who being a son or sons shall attain the age of twenty-one years or being a daughter or daughters shall attain the age of twentyone years or marry under that age with such consent as aforesaid then and in every such case as well the share hereinbefore originally limited to my brother or sister so for the time being dying of and in the said trust monies stocks funds and securities as the share or shares which by virtue of the last-mentioned clause would have survived or accrued to such brother or sister of and in the said trust monies stocks funds and securities if he or she had survived me shall remain and be In trust for all and every such children and child of such deceased brother or sister to be divided between or amongst them if more than one in equal shares as tenants in common And if there shall be but one such child then the whole of such share shall be In trust for that one or only child.

CYYIY PROVISION FOR TEERCETTIM ATTE CHILDERN

#### CXXIX.

#### PROVISION FOR ILLEGITIMATE CHILDREN.

(1) I give and devise my {messuage or tenement} and pre- Devise of real mises situate at to my (a) natural son A B (b) of &c. tural son in and the heirs of his body.

pounds three per Gift of stock (2) I give and bequeath the sum of cent. consolidated bank annuities to my natural children Eliza- tural children. beth B of &c. Mary B of &c. and Edward B of &c. to be equally divided between them as tenants in common.

(3) I give and bequeath all my household furniture and plate Gift of furnito my natural children by the late (c) M B to be equally divided children by a between them as tenants in common.

ture to natural

(a) The natural child's name by reputation should always be Practical dimentioned.

(b) It is usual to describe a natural child very particularly, Description specifying the name which it may have acquired by reputation, of natural and its usual place of abode. This, however, is not strictly children. necessary, if the child has clearly obtained a certain name. Rivers's case, 1 Atk. 410. The expression, "my reputed child," seems to apply to legitimate as well as to illegitimate children. The word "natural," or "illegitimate," should always be inserted, as it will precisely point out the person intended.

(c) Provisions for "my children by AB" have been repeatedly held to apply only to legitimate children, although the testator and A B were not then married, as it is determined that a marriage between them at a future time was to to be presumed. however improbable such an event might be. Godfrey v. Davis,

(4) I give and devise all that {messuage &c.} unto and to the

CXXIX.
PROVISION FOR
ILLEGITMATE
CHILDREN.

Devise of messuage to trustees, upon trust for son for life, to such uses as he shall appoint,

and in default, to the issue of A B, and in default of issue to testator's right heirs.

use of A B and C D and their heirs upon the trusts and for the intents and purposes hereinafter mentioned (that is to say) In trust for my natural child A B and his assigns for and during the term of his life without impeachment of waste for his and their absolute use and benefit And immediately after the determination of that estate to such uses upon such trusts and to and for such intents and purposes as the said A B shall by any deed or deeds writing or writings with or without power of revocation to be by him sealed and delivered in the presence of and to be attested by two or more credible witnesses from time to time direct limit or appoint. And in default of and until such direction limitation or appointment and so far as any such direction limitation or appointment shall not extend In trust for the heirs of the body of him the said A B And in default of such issue In trust for my own right heirs.

Trust for the maintenance of natural child till twentyone, and when he shall attain twenty-one,

in trust for him,

but if he shall not attain twenty-one, then to testator's executors.

Provision for advancement,

(5) In trust to pay and apply the interest and dividends thereof or such part thereof as shall to the said (trustees) and the survivor of them his executors and administrators seem fit for the maintenance and education benefit and advantage of my natural son A B until he shall attain the age of twenty-one years And when he shall attain the age of twenty-one years In trust to pay and transfer the said trust monies stocks funds and securities and the interest and dividends thereof unto the said A B his executors and administrators for his and their absolute use and benefit But if the said A B shall not attain the age of twenty-one years then the said trust monies stocks funds and securities shall remain and be In trust for my executors and administrators as part of my personal estate Provided always and I hereby further declare that it shall be lawful for the said

<sup>6</sup> Ves. 43. Kenebel v. Scrafton, 2 East 530. Harris v. Lloyd, 1 Turn. & Russ. 357. It is clear, however, that under a provision for the children of the late A B, illegitimate children would take if there were no legitimate children. Lord Woodhouselie v. Dalrymple, 2 Mer. 419.

(trustees) or the survivor of them his executors and administrators at any time or times at their or his discretion to raise and apply from and out of the said trust monies stocks funds and securities any sum not exceeding the sum of for or towards the preferment advancement or benefit of my said son

CXXIX. DOOURSON DOD ILLEGITYM ATE CHILDREN.

(6) In trust to pay the interest and dividends of the said to pay interest trust monies stocks funds and securities to my natural sons children. A B and C B and my natural daughters E B and M B during their respective lives in equal shares And after the decease of decease each and every of them the said AB CB E B and MB

(7) Do and shall pay transfer and assign the share of totransfer the said trust monies stocks funds and securities to which he or tive shares to she shall have become entitled for his or her life as aforesaid their issue as unto all and every or such one or more exclusively of the other spectively dior others of his or her issue whether children or grandchildren born in his or her lifetime or in due time afterwards as he or she shall by any writing under his or her band direct default of such direction unto all his or her children who being unto all the a son or sons shall attain the age of twenty-one years or being children at a certain age. a daughter or daughters shall attain that age or marry under that age with the consent of her guardian or guardians for the time being to be divided between the said children if more than one in equal shares but if but one then the whole to be paid transferred or assigned to that one.

they shall re-

And in and in default of direction

(8) And in case any of my said natural children shall die And if any of without having any issue of his or her body who under the shall die withtrusts aforesaid shall become entitled to a vested interest in the share to which such child shall have become entitled for his or her life Then and so often as the same shall happen

the children

(9) Do and shall pay the interest and dividends of the share upon trust to or respective shares to which any such child so dying as last their share aforesaid shall have been entitled for his or her life either ori- to the other ginally or by virtue of the present provision to the others and

children.

CXXIX.
PROVISION FOR
ILLEGITMATE
CHILDREN.

and after their decease to their respective children as above. other of my said natural children during their respective lives or life in equal shares if more than one And after their respective decease do and shall pay transfer and assign the share to which any or every of the said last-mentioned children or child shall have become entitled for his or her life as aforesaid of or in the said trust monies stocks funds and securities unto all and every or such one or more exclusively of the other or others of his or her issue whether children or grandchildren born in his or her life time or in due time afterwards as he or she shall by any writing under his or her hand direct And in default of such direction unto all his or her children who being a son or sons shall attain the age of twenty-one years or being a daughter or daughters shall attain that age or marry under that age with the consent of her guardian or guardians for the time being to be divided between the said children if more than one in equal shares but if but one then the whole to be paid transferred or assigned to that one.

And if all the children die without issue, over,

(10) And if all of them the said natural children shall die without having any issue of any of their bodies who under the trusts aforesaid shall become entitled to a vested interest in the said trust monies stocks funds and securities then as to the said trust monies stocks funds and securities and the interest and dividends thereof. In trust

upon same trusts in favour of children as are declared of monies to arise from sale of lands. (11) Upon and for such and the same trusts intents and purposes in favour or for the benefit of my natural child or children as are hereinbefore expressed and declared in favour or for the benefit of the same child and children of and concerning the monies to arise from the sale of my said real estates and the stocks funds and securities in which the same shall be invested and the interest dividends and annual produce thereof.

CXXIX a. PROVISION FOR TILERCOTTM ATTR CHILDREN.

# CXXIX a. (a)

Provided always and I do hereby further declare that it shall Power to be lawful for the said Mary B at any time or times after my Mary B, or in default to trusdecease by any deed or deeds to be by her legally executed tees to appoint And in default thereof for the said (trustees) or the survivor whatever. of them his executors administrators or assigns at any time or times after the decease of the survivor of myself and the said Mary B whichever shall first happen by any deed or deeds to be by them or him legally executed to appoint any part or parts of the said trust monies stocks funds and securities and the interest dividends and annual produce thereof to such person or persons upon such terms and conditions and in such manner as she they or he shall think proper Provided nevertheless and I Declaration do hereby further declare that the general power of appointment that the gehereinbefore given to the said Mary B or the said trustees or appointment is trustee for the time being (as the case may be) is given to her dones with them or him respectively with a view to enable her them or

neral power of

<sup>(</sup>a) It is extremely doubtful whether any certain provision can Unborn nabe made for an unborn natural child. Blodwellv. Edwards, Cro. tural children. Eliz. 510, Co. Litt. 3b; but the above clauses have been recommended as enabling a testator to effect such an object, if the donees of the power are persons in whom he can place perfect confidence. A gift to a child of which a certain woman is pregnant, is certainly valid. Gordon v. Gordon, 1 Meriv. 141.

CXXIX.
PROVISION FOR
ILLEGITIMATE
CHILDREN.

the view of providing for the children of Mary B by testator, as well living as to be born hereafter.

him respectively to provide for the child or children which the said Mary B may have at any time or times hereafter during my life or within ten calendar months next after my decease And it is my express desire that the said power of appointment shall not be exercised in favour of any stranger or strangers but shall be exercised so and in such manner that such after born child or children shall share equally with the said Mary and Edward B in the said trust monies stocks funds and securities and the interest dividends and annual produce thereof.

CXXX. PROVISIONS RELATING TO THE TRADE OF TERTATOR

### CXXX.

#### PROVISIONS RELATING TO THE TRADE OF TESTATOR.

(1) I hereby give devise and bequeath the trade (a) and bu- Devise and beas a (trade) and all my in- [and messusiness which I now carry on at terest therein and all my stock utensils implements and effects ages connected therewith] now or hereafter to be employed therein [and also all messuages upon certain tenements warehouses workshops hereditaments and premises now or hereafter to be employed therein for carrying on the said trade or business] and all sum and sums of money and debts which shall be due and owing to me at the time of my decease in respect of the said trade or business with all and every of their appurtenances unto AB and CD their heirs executors administrators and assigns upon and for the trusts intents and purposes and with under and subject to the powers provisoes and declarations hereinafter expressed and declared of and concerning the same (that is to say)

trusts.

(2) Upon trust that they the said (trustees) and the survivor Upon trust to of them and the executors administrators and assigns of such business until survivor do and shall carry on manage and conduct the said eldest son attain a certain trade or business until my eldest son J shall attain the age of age, and if he twenty-one years or if my said son J shall depart this life before age or decline

die before that

<sup>(</sup>a) The trade may be thus mentioned, or there may be a reci- Practical dital of the trade, and the desire of the testator to have it carried rection. on as in LXXIV. (3.)

CXXX.
PROVISIONS
RELATING TO
THE TRADE OF
TESTATOR.

business, until second son shall attain the age, and if second son should die or decline, to sell. he shall attain twenty-one or having attained that age shall for six calendar months decline carrying on and engaging in my said trade or business then until my second son T shall attain the age of twenty-one.

(3) But if my said second son T shall depart this life before he shall attain the age of twenty-one years or having attained that age shall for six calendar months decline as aforesaid then (a) upon trust to sell my said trade and business and all my interest therein and the good-will and custom of my said trade or business and all my stock utensils messuages tenements warehouses hereditaments and premises hereinbefore devised and bequeathed to any person or persons willing to purchase the same for such price or prices as the said (trustees) or the survivor of them or the executors administrators and assigns of such survivor shall think reasonable And

And stand possessed of proceeds of sale in trust for testator's executors. (4) I do hereby declare that the said (trustees) or the survivor of them or the executors administrators and assigns of such survivor shall stand and be possessed of and interested in the monies to arise from such sale in trust for my executors and administrators as part of my personal estate.

But if either son shall attain twenty-one, then to convey the trade, &c. to such son. (5) But if either of my said sons shall attain the age of twenty-one years and shall within six calendar months afterwards signify his consent in writing to carry on the said trade or business then as soon as such event shall occur Upon trust to convey transfer assign and make over the said trade or business and all my interest therein and also the messuages tenements warehouses utensils hereditaments premises and all the secu-

Third and other sons.

<sup>(</sup>a) The option may of course be given to a third or any number of sons according to the circumstances of the case, as follows, "then until some one of my other sons shall attain the age of twenty-one but if all my said sons shall attain that age or having attained that age shall so decline as aforesaid then (to sell ut supra).

rities debts goods and effects relating to the said trade or business unto such of my said sons as shall first attain the said age of twenty-one years his heirs executors administrators and THE TRADE OF assigns.

CXXX: PROVISIONS RELATING TO TEST A TOD

(6) Provided always that if my said son J shall attain such Proviso that age and shall thereby become entitled to have the said trade or shall give sebusiness messuages warehouses utensils hereditaments premises curity to admit second and effects conveyed and assigned to him as aforesaid he shall son to a joint give security or securities to the satisfaction of the said (trustees) cern. or the survivor of them and the executors administrators and assigns of such survivor and according to the value of the said trade or business for the admission of my said second son T into an equal share, of the said trade or business and for the conveyance or assignment to him of an equal moiety or half part or share of the said messuages tenements warehouses hereditaments utensils and premises unto my said son T his heirs executors administrators and assigns when he shall attain the said age of twenty-one years my will and mind being that if my said sons shall both attain such age they shall carry on the said trade or business together as copartners and shall be equally seised possessed and interested in the said trade and business messuages workshops warehouses hereditaments utensils premises and effects to them their heirs executors administrators and assigns as tenants in common but if only one of my said sons shall attain such age then my will and mind is that he shall be seised and possessed thereof to him his heirs executors administrators and assigns for his and their own absolute use and benefit.

share in con-

(6 a.) Upon trust that they the said (trustees) or the survivor Upon trust to of them his executors administrators or assigns do and shall carry on until carry on manage and conduct my said trade or business until my attain twenty. youngest son TB shall have attained the age of twenty-one under that age, years or in case of his decease under that age until my second son attain son BB shall have attained his age of twenty-one years (if he shall not have attained that age on the decease of the said TB) but if he shall have attained that age in the life-time of the said T B then until such decease of the said T B.

one or if he die until second twenty-one.

CXXX.
PROVISIONS
RELATING TO
THE TRADE 'OF
TESTATOR.

Declaration of the trusts of trade, warehouse and profits. (7) And I do hereby declare that during such time as the said trade or business shall be carried on by the said (trustees) in pursuance of the trusts contained in this my will the said (trustees) and the survivor of them and the heirs executors administrators and assigns of such survivor shall be seised possessed of and interested in the said trade or business messuages workshops warehouses utensils hereditaments monies debts and effects and the profits to arise therefrom Upon and for the trusts intents and purposes and with under and subject to the powers provisoes and declarations hereinafter mentioned (that is to say)

Powers to trustees to manage trade (8) I do hereby authorise and empower the said (trustees) and the survivor of them and the executors administrators and assigns of such survivor to carry on and I direct that they and he shall have the full and complete controul and management of the said trade or business and shall in all things carry on and conduct the same according to the best of their and his judgment as I might or could have done if I were living and acting therein. (a)

Power to enter into contracts. (9) And that it shall be lawful for the said (trustees) and the survivor of them and the executors and administrators of such survivor to enter into such contracts or agreements respecting the said trade or business as they or he shall think proper.

To increase or diminish business. (10) And that it shall be lawful for the said (trustees) and the survivor of them his executors and administrators to increase or diminish the concerns of the said trade or business from time to time.

To make purchases. (11) And out of the profits of the said trade or business to make all such purchases for the benefit of the said concern as they or he shall think proper.

Practical direction.

<sup>(</sup>a) This clause will give the trustees the fullest authority. If it is intended to give them particular powers, the clauses immediately following should be adopted according to the wishes of the testator.

(12) To adjust and settle and if necessary to compound and compromise all accounts debts and sums of money owing to me or from me relating to the said trade or business.(a)

CYYY PROVISIONS RELATING TO THE TRADE OF TESTATOR.

(13) To sell such part or parts of the said warehouses workshops and premises and for such price or prices as to them or him shall seem fit.

To adjust and compromise debts. To sell premises.

(14) To discontinue the said trade or business partially or To discontinue wholly as to them or him shall seem most advantageous for the persons interested in the same under this my will.

(15) To hire use and employ all necessary clerks servants Hire clerks and workmen with such salaries and wages as they or he shall think fit and proper.

and workmen.

(16) And do all such other matters and things for the benefit To do all other of the said trade or business and execute all such acts and deeds relative thereto as they or he shall think fit [and as if they or he were absolutely entitled to the said trade or business.]

(17) Provided always and I do hereby direct that all charges That expenses expenses and losses incurred and sustained in the managing and carrying on the said trade or business shall be paid and defrayed &c. and next in the first place from and out the current profits of the said estate. trade or business and if they are not sufficient from and out of my personal estate.

out of profits. out of personal

<sup>(</sup>a) See ante p. 163. n (a) (b.)

CXXXI.
PROVISIONS
RELATING TO
THE TRADE OP
TESTATOR.

### CXXXI.

Direction that sons shall be employed in business and be instructed therein, and receive reasonable salary. Provided always and I hereby direct that during such time as the said business shall be so carried on by the said trustees and the survivor of them and the executors administrators and assigns of such survivor my said sons shall be employed in carrying on and conducting the same so far as their respective ages will allow and that my said sons shall be instructed in the conduct and management thereof and that they shall receive such sum or sums not exceeding pounds a year for their services in carrying on the same as the said (trustees) and the survivor of them and the executors administrators and assigns of such survivor shall think fit.

CXXXII PROVISIONS RELATING TO THE TRADE OF TESTATOR.

# CXXXII

(1) And I do hereby declare my will to be that if any of my Direction to present or after born sons shall live to attain the age of twenty- trustees to assign business one years and shall signify his consent in writing within dar months after he shall attain the said age of twenty-one years twenty-one to carry on and engage in the said trade and business then I here- years, if he shall give secuby direct the said (trustees) and the survivor of them and the rity to pay porexecutors administrators and assigns of such survivor to put the children. first of my said sons so attaining the age of twenty-one years and signifying his consent as aforesaid into the sole and complete possession of my said business and trade and to assign and make over to my said son all securities debts goods effects and premises belonging to or generally used or employed in carrying on my said trade or business if my said son who shall so take my said business or trade shall give security to the satisfaction of my said (trustees) or the survivor of them his executors and administrators for the payment of the portions or legacies hereby provided out of the said trade or business for my other children as and when the same shall respectively become due and payable or such of them as shall for the time being remain unpaid and which security may be the bond of such son if my said (trustees) or the survivor of them his executors and administrators shall think proper to accept the same.

calen- to son on at-

(2) And I direct that when and so soon as my said son I B Provisions for the sale of tes-VOL. II.

CXXXII.

PROVISIONS

RELATING TO

THE TRADE OF

TRATATOR.

tator's business to his sons. shall attain the age of twenty-one years and shall signify his consent in writing calendar months afterwards to carry on or engage in the said trade or business the said (trustees) or the survivor of them his executors and administrators shall offer for sale to my said son I B or in case my said son shall die before he shall attain twenty-one or shall decline as aforesaid the said (trustees) or the survivor of them his executors and administrators shall offer for sale to my son H B (a) for such price as the trustees or the survivor of them his executors and administrators shall think fair and reasonable my said trade or business of a

and all my interest therein and all the stock utensils and effects for the time being employed therein and all workshops warehouses and premises for the time being connected therewith.

Provision that sons shall pay nothing for good-will. (3) Provided nevertheless that my said sons I B and H B or either of them (as the case may be) shall not in such case be required to pay any consideration for the good-will of the said trade or business.

Power to take security for the purchase money. (4) And I do hereby declare if either of my said sons shall purchase the said trade or business stock utensils and effects workshops warehouses and premises and shall not immediately pay down the price or consideration money for the same it shall be lawful for the said (trustees) or the survivor of them his executors and administrators to accept and take as a security for the payment of the price or consideration or of so much thereof as shall not immediately be paid down with interest for the same in the mean time after the rate of five pounds for every one hundred pounds by the year a mortgage of the hereditaments and premises so purchased or such part or parts of them as shall seem most proper to the said (trustees) and the survivor of them his executors

Other sons.

<sup>(</sup>a) The option of purchase may be given to any number of sons in the same words.

and administrators and also such other real or personal security as they or he shall think adviseable to accept. And I further declare that the securities to be given by my said sons respectively as aforesaid shall be given and made for such time and upon such terms and conditions and be altered or varied for such other securities as the said (trustees) or the survivor of them his executors and administrators shall think proper But I do nevertheless declare that neither of my said Sons not to sons who shall so purchase my said trade or business shall be compelled to pay more be bound or obliged to pay off in any one year more than than a certain pounds towards the discharge of the said conthe sum of sideration money.

PROVISIONS RELATING TO THE TRADE OF TERTATOR.

And to alter

CXXXII a.

PROVISIONS

RELATING TO

THE TRADE OF

TESTATOR.

## CXXXII a.

Declaration that trustees shall stand possessed of testator's share in trade and effects. (1) And I do hereby declare that the said trustees or trustee for the time being shall stand possessed of my said share and interest of and in the said manufactory and business partnership stock and effects monies and debts and of and in the profits to arise from the same and shall also stand possessed of my said leasehold house hereditaments and premises at &c. aforesaid upon and for the trusts intents and purposes hereinafter expressed (that is to say)

As to the mo-

- upon trusts declared of residue.
- (2) As to my share and interest of and in the said monies and debts which at the time of my decease shall be due and owing to me and my said partners for or on account of the said manufactory and business upon and for the trusts intents and purposes hereinafter expressed and declared of and concerning my residuary property hereinafter mentioned.

As to share in partnership stock and leasehold premises.

If eldest son shall engage in business

In trust for eldest son.

(3) And as to my share and interest of and in the said manufactory and business partnership stock and effects and of and in the profits to arise from the same And also as to my said leasehold house hereditaments and premises at &c. aforesaid In case my eldest son E shall upon his attaining the age of twenty-one years be desirous to be engaged in the said manufactory and business in respect of my share thereof In trust for him my eldest son his executors administrators and assigns.

If eldest son shall not attain twenty-one, or shall refuse to carry on business and second son shall be willing. (4) But in case my eldest son shall not attain the age of twenty-one years or having attained the age of twenty-one years shall refuse to be engaged in the said manufactory and business in respect of my share thereof And my second son W shall upon his attaining the age of twenty-one years be desirous to be engaged in

the said manufactory and business in respect of my share thereof CXXXII a. Then in trust for my said second son his executors administrators and assigns.

RELATING TO THE TRADE OF TESTATOR.

(5) But in case neither of them the said E and W shall attain In trust for sethe said age of twenty-one years or having attained the said age If neither shall they shall respectively refuse to be engaged in the said manu- one, or will factory and business in respect of my share thereof Then in carry trust for my third son G his executors administrators and assigns In trust for in like manner.

attain twentycarry on busithird son.

(6) And in case all of them my three sons shall die under the And if all age of twenty-one years or having attained the said age they refuse, shall all respectively refuse to be engaged in the said manufactory and business in respect of my share thereof.

(7) Or in case the said trustees or trustee for the time being or the trade shall by virtue of the powers hereinafter contained think proper shall be discontinued. to discontinue the said manufactory and business altogether in respect of my share thereof.

(8) Then I direct that the said trustees or trustee for the time Upon trust to being shall forthwith absolutely sell and dispose of my share and interest of and in the said manufactory and business partnership stock and effects And also my said leasehold house hereditaments and premises at &c. aforesaid either together or in lots by public sale or private contract to any person or persons whomsoever for the best price or prices in money that can be reasonably had or gotten for the same And for promoting and facilitating such Do and shall enter into make and execute all such contracts assignments and assurances as the said trustees or trustee for the time being shall think proper.

sell the same.

(9) And I do hereby declare that the said trustees or trustee Andstand posfor the time being shall stand possessed of the monies to arise seese or proceeds upon from such sale or sales upon and for the trusts intents and purposes hereinafter expressed of the trust monies to arise from

sessed of protrusts declared of residue.

CXXXII a.
PROVEHORS
RELATING TO
THE TRADE OF
TESTATOR.

my residuary property as hereinafter is mentioned or such or so many of the same trusts intents purposes provisoes and declararations as shall be then subsisting undetermined and capable of taking effect.

Declaration that on attaining twentyone, eldest son shall be admitted a partner, and be entitled to onefourth of the profits. (10) And I hereby declare that when my son E shall attain the age of twenty-one years he shall become and be admitted a partner in the said trade if he shall think fit and shall in such case have and be entitled during the partnership to one-fourth of the profits and gains which may or shall arise or be made in the said trade after his admission as a partner therein.

Similar declaration as to second son. (11) And I hereby declare that when my said son W shall attain the age of twenty-one years he shall become and be admitted a partner in the said trade if he shall think fit and shall in such case have and be entitled during the partnership to one-fourth part of the profits and gains which shall arise or be made in the said trade after his admission as a partner therein. (Similar declaration as to third or other sons, according to the number.)

Direction that sons shall notify their election in writing to trustees to become partners. (12) And I hereby direct that all my said sons shall within the space of one year next after they shall respectively attain the age of twenty-one years determine and elect whether they will become partners in the said trade or not and in case they determine and elect to become partners therein they shall within that time respectively notify their election and determination by writing under their respective hands to my said trustees or the survivor of them his executors and administrators or otherwise they shall be considered as having refused to become partners therein.

If sons be incompetent or improper persons, power to trustees to dissolve the partnership

(13) Provided always and my will is that in case my trustees or trustee for the time being shall from the conduct of any or either of my sons who shall become a partner or partners as aforesaid while any of the trusts of this my will respecting the said trade shall remain unperformed be of

opinion that it will be injurious to the trade then carried on and to the rest of the partners therein that such son or sons should any longer continue a partner or partners in the said trade that then and in such case it shall be lawful to and for my said trustees or trustee for the time being or the major part of them and he and they shall have full power and authority immediately to dissolve the partnership so far as respects such son or sons and such son or sons shall thenceforth be no longer a partner or And the son partners in the said trade and from and after such dissolution of the said partnership or dismission therefrom have and be entitled to such legacy and legacies and provision as is hereinbefore made for such of my said sons as shall neglect or refuse to become a partner or partners in the said trade or business any thing hereinbefore contained to the contrary in any way notwithstanding.

CXXXII a. PROVINCE RELATING TO THE TRADE OF TESTATOR.

so far as respects such

shall cease to be a partner, and be entitled to provision given to sons who refuse to engage in the trade.

(14) And I do hereby direct that in case any of my said sons E W and G shall refuse to become partners or a partner in the said trade as aforesaid Then every of such sons so refusing to become a partner in the said trade shall upon his attaining the age of twenty-two years (but not unless he attains that age) have and receive from and out of the capital then employed therein the sum of pounds to and for his and their own use and benefit and every such son shall nevertheless be thing further. entitled to and shall have and receive his original share of the interest which shall have arisen or accrued from or by the said capital employed in the said trade up to the time of his attaining the age of twenty-one years but shall not be entitled to any further part or share thereof by way of survivorship or accruer on the death of any other or others of my said sons.

Direction that if sons shall refuse to engage in trade, they shall have the sum of pounds out of the capital thereof, and share of the accumulated interest, but no-

(15) And I also declare my will and mind to be that in case Declaration any of my said sons E W and G shall depart this life under the that if any son age of twenty-one years or shall refuse to become a partner in the said trade within the time aforesaid or withdraw himself shall be entittherefrom after his admission as a partner therein and I shall have no after-born son or sons who shall live to attain the age of

shall not engage in business, other sons led to his share.

CXXXII a.
PROVISIONS
RELATING TO
THE TRADE OF
TESTATOR.

twenty-one years and shall be admitted a partner or partners in the said trade as hereinafter is mentioned in the place and stead of such of them my said sons E W and G as shall depart this life under the age of twenty-one years or shall refuse to become a partner in the said trade or withdraw himself therefrom as aforesaid Then and in such case the survivor or survivors of them my said sons E W and G who shall elect to become such partner or partners in the said trade and in the manner and upon the terms aforesaid shall have and be entitled in equal shares and proportions to the whole of the share or shares to which such son or sons so dying under the age of twenty-one years or declining to become a partner or partners in the said trade or withdrawing himself therefrom would either originally or by survivorship or accruer have been entitled of the profits and gains which shall arise or be made in the said trade or business after their respective admission as partners therein And in case all my said sons but one shall happen to depart this life under the age of twentyone years or shall refuse to become partners in the said trade and I shall have no after-born son or sons who shall live to attain the age of twenty-one years as aforesaid Then and in such case such one son who shall elect to come into the said trade in order to carry on the same in copartnership as aforesaid shall have and be entitled to the whole of the profits and gains which shall arise or be made in the said trade after his admission to the same after answering and paying thereout unto such of his brothers as shall refuse or decline to carry on the said trade in partnership or shall withdraw himself from the said trade after his admission as a partner therein onesixteenth part of such profits and gain until such brother attain the age of twenty-eight years or be married or depart this life provided such brother shall not carry on the same trade within the weekly bills of mortality as hereinafter is mentioned And such one son who shall elect to come into the said trade in order to carry on the same in copartnership and shall continue therein shall and may thenceforth and subject as aforesaid carry on the said trade to and for his own use and benefit.

And if but one son shall carry on trade the whole business shall go to that one son, he paying interest and certain sum to his brothers.

(16) And I do hereby direct that the firm or style by which the said trade shall be carried on until one or more of my said sons shall be admitted therein shall be "AB" and after the admission of one or more of my said sons therein the same shall be "A B and son" or "A B and sons" as the case may be.

CXXXII a. PROVISIONS RELATING TO THE TRADE OF TESTATOR.

Direction as to title of firm.

(17) And I do hereby direct that in case all or any of my said sons shall refuse or decline (within the respective times before limited) to carry on the said trade or business in copartnership upon the terms and in the manner hereinbefore mentioned Then I do hereby direct that every such son so refusing or declining to carry on the said trade or business shall have and be entitled to one-sixteenth part or share of the clear profits or gain thereof until they shall respectively attain the age of twenty-eight years or be married or depart this life which shall first happen.

And if all the sons shall refuse upon the terms mentioned. Direction that every son shall have one-sixteenth thereof until they shall attain twentyeight years, or be married, or die.

(18) And in case any of my said sons who shall become a partner or partners in the said trade or business shall at any time after their or his admission into the same and before his or from the parttheir attaining the age of twenty-eight years or marriage be minded or desirous of withdrawing himself or themselves therefrom then and in such case such son or sons so withdrawing himself or themselves from the said trade or business shall have and be entitled to one-sixteenth part or share of the clear profits and gains thereof until he or they shall attain the age of twentyeight years or be married or depart this life which shall first happen.

Similar benefit withdrawal nership.

(19) Provided always that no such son or sons so refusing declining or withdrawing himself or themselves shall afterwards carry on the same trade within the weekly bills of mortality but in case such son or sons so refusing declining or withdrawing as aforesaid shall go into or carry on the same trade within the weekly bills of mortality Then and from thenceforth the said one-sixteenth part or share so directed to be paid to him shall cease and determine and he or they shall not at any time thereafter have or be entitled to any share of the profits and gains of

Provision that no son declining to engage in the business shall carry on the same trade within the bills of mortality, and if he shall do so, his one-sixteenth shall cease.

CXXXII R.
PROVISIONS
RELATING TO
TRADE OF
TESTATOR.

Direction that each of the sons engaging in business on attaining twenty-three, or marriage, shall be entitled to the sum of pounds.

And sons not engaging in business shall be entitled to an additional sum of pounds on attaining twenty-five. the trade or business to be carried on by the other son or sons in pursuance of this my will.

(20) And I do hereby direct that as and when such of my said sons E W and G as shall elect to become partners or partner in the said trade and not have withdrawn themselves or himself from the same shall respectively attain the age of twenty-three years or shall be married after having attained the age of twentyone years which shall first happen every such son shall have and be entitled to the sum of pounds to be forthwith raised and paid out of the capital stock of the said trade or business to and for his own respective use and benefit And every of my said sons who shall decline or refuse to become a partner in or withdraw himself from the said trade or business and shall upon his attaining the age of twenty-two years have received the sum pounds hereinbefore directed to be paid to him shall upon his attaining the age of twenty-five years have and be entitled to the sum of pounds to be raised and paid to him out of the capital stock of the said trade or business to and for his own respective proper use and benefit but in case any of my said sons shall happen to die before he or they shall respectively become entitled to the said sums of pounds and pounds or any of them then the said sums of

pounds or any of them then the said sums of pounds and pounds so intended for him or them so dying shall not be raised or paid.

Provision that when all the sons who engage in business shall have attained the age of twentyeight years, trustees shall make up accounts. (21) And I do hereby direct that when all my said sons E W and G shall have attained the age of twenty-eight years in case they shall all of them have elected to become partners in the said trade and none of them shall have withdrawn himself from the same Or if any of my said sons shall have declined or refused to become partners or partner in the said trade or withdrawn themselves or himself therefrom or have departed this life under the age of twenty-eight years And I shall have any other son or sons hereafter born who shall live to attain the age of twenty-one years in which case such after born son or sons will under the provisions of this my will hereinafter contained

have the election of coming into the said trade and being admitted a partner or partners therein if he or they shall think proper in the place of his brothers or brother who shall decline or refuse to become a partner or partners therein or withdraw himself therefrom or die under the age of twenty-eight years Then when such after-born son or sons as shall so elect to come into and be a partner or partners in the said trade shall have attained the age of twenty-eight years or bave departed this life my said trustees or trustee for the time being do and shall make up state and settle a full and general account in writing of all the stock monies debts and effects which shall be in or belonging or due or owing to the said trade or business and do and shall cause a just valuation and appraisement to be made of all the particulars thereof And do and shall in the first place And after paying the beforeafter raising and paying thereout the sum or sums of money mentioned hereinbefore mentioned to each of my said sons or such of raise the them as shall have lived to become entitled thereto raise therepounds and lay out and invest the same and invest the out the sum of in the purchase of a competent share or competent shares of the parliamentary stocks or funds of Great Britain in their or his names or name and do and shall stand possessed of and And stand posinterested in the stocks funds and securities to be purchased pounds upon the trusts and to and hereinaster with the said sum of for the intents and purposes hereinafter mentioned (that is to sav)

CYYYII . PROVISIONS RELATING TO THE TRADE OF TESTATOR.

pounds.

sessed thereof upon trusts mentioned.

(22) And after the said several sums so to be raised shall And after all have been raised as aforesaid and all the legacies hereby given the sums have been paid, upon and bequeathed shall be answered and paid and subject thereto trust to divide Upon trust that they my said trustees or trustee or the survivor to double the of them or the executors administrators or assigns of such survivor Do and shall part and divide all the residue and remain- have engaged der of the said capital stock debts and effects which shall be in attained the or belonging due or owing to the said trade or business into eight years, or double the number of shares as there shall be sons of my who shall die before leaving body now born or hereafter to be born who shall attain the age widows and of twenty-eight years and be then living or who while in co-children alone. partnership as aforesaid shall have attained the age of twenty-

the residue insons, who shall in business, & age of twentyCXXXII a.
PROVISIONS
RELATING TO
THE TRADE OF

And if all such sons attain twenty-eight

In trust for all of them equally.

And if only one such son shall engage in trade, the whole to that one.

eight years or die under that age leaving a widow and a child or children living at the time of his decease or born in due time after or a widow only living at his decease or a child or children at his decease but no widow. And if all my said sons so electing to be and remaining partners shall attain the age of twenty-eight years the whole of the said capital stock debts and effects shall be. In trust for such of my said sons in equal shares and proportions. And if I shall have but one son electing to be and continuing a partner as aforesaid who shall attain the age of twenty-eight years or who shall depart this life under that age leaving a widow and a child or children living at his decease or born in due time after or leaving a widow only or a child or children then living but no widow. Then the whole of the said capital stock debts and effects to be in trust for that one son.

Provision for the widows of sons engaging in trade out of one share of the residue.

(23) And if I have one or more son or sons who being a partner or partners shall attain the age of twenty-eight years and be living when the younger of his brothers entitled to be a partner shall attain the age of twenty-eight years or die and one or more son or sons who being and continuing a partner as aforesaid shall die leaving a widow and a child or children living at his or their decease or respective deceases or born in due time after or leaving a widow only or a child or children only living at his or their decease or respective deceases but no widow Then if only one of my sons being and continuing a partner as aforesaid shall have left a widow and children or a child living at his decease or born in due time after or have left a widow only or a child or children only living at his decease and no widow one of the said shares shall be laid out and invested in the public funds of Great Britain upon the trusts hereinafter expressed and declared for the use and benefit of the widow and child or children of such one or only son And if more than one of my said sons being and continuing a partner as aforesaid shall have left a widow and a child or children living at their respective deceases or born in due time or a widow only or a child or children only living at his or their respective deceases and no widow Then as many of the said shares shall be so laid out and invested upon the trusts hereinafter expressed as I shall

have sons living or continuing a partner as aforesaid who shall have respectively left a widow and a child or children living at their respective deceases or born in due time after or have left a widow only or a child or children living at their respective deceases and no widow And the remaining share shall be divided between or amongst such of my said sons then living as shall have elected to become partners and shall have continued amongst the partners in the said trade to their respective ages of twentyeight years share and share alike And if but one son shall be living who shall have elected to carry on and shall have continued in the said trade and shall have attained the age of twenty-eight years then such one son shall have and be entitled to the said remaining share thereof the part or share or parts or shares of such widow and child or children respectively to be ascertained according to the then last preceding annual settle- paid to trustees upon trust ment and to be paid to my said trustees or the survivor of them to invest, or the executors or administrators of such survivor Upon trust that they the said trustees or trustee for the time being do and shall lay place out and invest the same in the purchase of &c. (as ante 299. (21.) and do and shall stand and be possessed of the and stand possaid stocks funds and securities so to be purchased as aforesaid Upon such and the same trusts for the benefit of such widow trusts as are and children and with such limitations over for the benefit of my other sons and their widows and children and subject to such powers and provisions as are hereinafter expressed and declared of and concerning the stocks and funds to be purchased by the pounds hereinbefore directed to be invested as said sum of aforesaid so far as such trusts relate to the widow and children of the sons for whom or for whose widow and children the same sum of pounds is intended to be invested or as near thereto as circumstances will permit.

CXXXII a. PROVISIONS RELATING TO THE TRADE OF TERTATION

And the other of the shares to be divided other sons.

the widow and children to be

sessed thereof upon the same declared of the pounds.

(24) And in case I shall have no son who being a partner as And if there aforesaid shall attain the age of twenty-eight years and be living at the time hereinbefore expressed to entitle him to such surplus shares nor any son who shall become a partner as aforesaid and while in partnership as aforesaid shall attain the age of twentyeight years or die a partner under that age leaving such widow

shall be no such son, who shall attain twenty-eight, or leave a widow or chil-

CXXXII a. DROVIESONS RELATING TO THE TRADE OF THE A TOD

then the resi-

and child or children or such widow only or child or children and no widow as aforesaid Then and in that case all the residue and remainder of the said capital stocks debts and effects shall be

due shall be in trust for children of daughters of testator, who have attained twenty-one, to take per capita and not per stirpes. And if there shall be no

(25) In trust for all and every of my said daughters' children who have attained the age of twenty-one years such children of my said daughters to take per capita and not per stirpes in equal shares and proportions if more than one And if there shall be but one such child the whole to be in trust for that one child but if none of my daughters shall have a child that shall attain the age of twenty-one years Then

In trust for pephews and neices of testator.

such children.

(26) In trust for all my nephews and neices who shall be then living and the survivor of them his or her executors administrators or assigns.

Declaration that trustees shall stand possessed of the pounds.

(27) And I do hereby direct that my said trustees and the survivor of them and the executors administrators and assigns of

such survivor Do and shall stand and be possessed of and in-

terested in the said stocks funds and securities so to be pur-

pounds hereinbefore directed to

Upon trust for all testator's sons for life.

And after their decease, son's share to be upon trust for their widows until their youngest child shall attain twenty-one,

be raised Upon the trusts and to and for the intents and purposes hereinafter mentioned and expressed (that is to say) Upon trust for all my sons as well those already born as those hereafter to be born in equal shares and proportions during their respective natural lives as tenants in common And after the decease of every such son the share to which he shall be so entitled for his life as aforesaid shall be upon trust for his widow in case he shall leave a widow and she shall continue a widow until her youngest child by him shall attain the age of twenty-one years or depart this life under that age And in trust for all and every his child and children equally to be divided between or among the widow and the said children share and share alike the part or share of such widow therein to be paid to her executors administrators

or assigns when the youngest of her children by my said son so dying as aforesaid shall attain the age of twenty-one years or shall depart this life under that age and upon condition that she shall

chased with the said sum of

and then equally between all the children and widow.

remain sole and unmarried but the interest or dividends of such her part or share in the meantime to be paid to her in case she shall remain sole and unmarried as and when the same shall become due and payable And in case such son respectively shall leave no widow and such son or sons respectively shall leave son shall leave one or more child or children then the whole to be In trust for such children equally to be divided amongst them if more than children, then one and if but one then In trust for such only child the part or children share or parts or shares of such children or child whether such their his or her parent respectively shall have left a widow or vested at twenty-one. not to be an interest vested or interests vested in and to be paid to him her or them at his her or their age or respective ages of twenty-one years And if any such child shall depart this life under the age of twenty-one years then as well the original and accruer. part or share or parts or shares of him her or them so dving as the part or share or parts or shares surviving or accruing by virtue of this present clause shall go and be paid to the survivors or survivor or others or other of the said children and their respective executors administrators and assigns to be an interest vested or interests vested in and to be paid to the children or child respectively entitled thereto at such time or times as is hereinbefore mentioned with respect to his her or their original share or shares And if all the said children save one of such sons And if all the shall die under the age of twenty-one years the whole of such die under pounds and twenty-one, son's part or share of and in the said sum of the stocks funds and securities on which the same shall be in- whole of the vested shall be In trust for such son's said widow so continuing to go to that unmarried as aforesaid and the said only child to be divided between them in equal shares and proportions

CXXXII a. PROVISIONS BRIATING TO THE TRADE OF TRETIATION.

And if such no widow, but shall leave in trust for the

save one, the parent's share

(28) And I do hereby direct that after the decease of such Direction that son the interest dividends and annual produce of the share to which he shall be so entitled for his life of the said sum of pounds and the stocks funds and securities which the same shall to the provibe invested as aforesaid or so much of the said interest dividends and annual produce as my said trustees or trustee for the time being shall think necessary shall after the decease of their re- ance and eduspective fathers and subject to the provisions hereby made for children,

after decease of sons, the interest of the shares subject sions made for widows shall be applied to the maintencation of the

CXXXII a.
PROVISIONS
RELATING TO
THE TRADE OF
TESTATOR.

and the residue to accumulate for the benefit of persons ultimately entitled to fund.

If son shall leave widow and no children

In trust as to son's share for the widow during her life and widowhood.

And then to be divided between testator's sons upon the same trusts as are declared of their original shares.

the widows of their fathers respectively be paid and applied for and towards the maintenance and education of such child or children in the meantime until he she or they shall respectively attain the age of twenty-one years and the residue be invested in such stocks funds and securities as aforesaid so as to accumulate in the way of compound interest And such residue and the accumulations thereof shall be in trust for the persons who under this my will shall become entitled to the fund whence such accumulations shall have proceeded But in case my said sons shall at the time of his or their decease or respective deceases leave a widow only and no child or children him or them surviving or there being such child or children in case all of them shall happen to die under the age of twenty-one years Then after the decease of such son as to the part or share or parts or shares of such my said sons as shall so die leaving a widow but no child or children who shall live to attain the age of twenty-one years In trust for his or their widow or respective widows during their respective natural lives (if she or they shall so long continue sole and unmarried) and in case any one or more of my said sons shall have no child who shall attain the age of twenty-one years Then after his or their decease or respective deceases (subject to the provisions hereby made for his or their widow or respective widows as aforesaid in the share or shares to which such son or sons shall be so originally entitled for his or their life or lives respectively) to be divided into as many shares as there shall be sons of my body then living or then dead having left a widow or any child or children and the said shares shall be upon such trusts for my said surviving or other sons and their widows respectively and their child or children respectively as are hereinbefore declared of their said respective original shares And if more than one of my said sons shall leave no child who shall attain the age of twenty-one years Then after the decease of such last-mentioned son or sons respectively the share or shares to which such son or sons shall or if living would by survivorvorship have been entitled shall be In trust for the then surviving or the other sons and their widow respectively and their respective child or children as are hereinbefore declared of their respective original shares And if one only of my

said sons shall leave a child who shall attain the age of twentyone years then after the decease of the others of my said sons and such failure of issue of their bodies respectively as aforesaid And subject to the provisions hereinbefore and hereinafter contained for their widows respectively the whole of the said sum of pounds and the stocks funds and securities on which the same shall be invested to be upon such trusts for such only son and his widow and his child or children respectively as hereinbefore are declared of his original share of and in the same And in case none of my said sons shall have a child who shall attain the age of twenty-one years children, Then as to the whole of the said stocks funds and securities hereinbefore directed to be purchased as aforesaid (subject to the life interest of the widow or widows of such of my said sons as shall leave a widow or widows and subject to the powers herein-Upon trust for all and every of my said after contained) daughters' children who shall attain the age of twenty-one years such children of my said daughters to take per capita and not per stirpes in equal shares and proportions if more than one and if there shall be but one such child the whole to be in trust for that one child And if none of my daughters shall have a child who shall attain the age of twenty-one years then Upon trust

(28) Provided also and my will is that in case I shall have Provision that any other son or sons hereafter born in my lifetime or in due other son shall time after my decease then I give and bequeath unto every such after born son pounds to be an interest vested in and to be paid to him upon his attaining the age of twenty-one And my will is that every such after born son and his widow child and children (if any) shall be entitled to a share of the stocks funds and securities to be purchased with the said sum of pounds hereinbefore directed to be invested therein as aforesaid equally with my said sons E W and G and their widows and children the same to be payable and paid at such time and times and with under and subject to the same powers provisoes and limitations and to be attended with the same right of survivorship and in such and the same manner in all respects as the shares hereinbefore given to or in trust

CXXXII a. PROVISIONS RELATING TO THE TRADE OF TESTATOD

And if no son shall have any

upon trust for all testator's daughters' children.

And if no daughter shall have any children. upon trust. in case any be born, he shall be entitled to the

pounds. and an equal share of the pounds.

CXXXII a. PROVISIONS RELATING TO THE TRADE OF TESTATOR.

for my said sons E W and G and their widows and children of and in the same stocks funds and securities are hereinbefore directed limited given or bequeathed,

If any of testator's present sons shall refuse to engage in trade, any after born son may be admitted in the place of such son as shall se refuse, and his share shall be in lieu of the legacies left to him.

(29) Provided also and I direct that in case any one or more of my said sons E W and G shall neglect or refuse to become partners or partner in the said trade upon the terms and in the manner hereinbefore expressed or shall die either before or after he or they shall have neglected or refused to become a partner or partners therein or shall withdraw himself or themselves or be dismissed therefrom as hereinbefore is mentioned. And I shall have one or more son or sons hereafter born who shall live to attain the age or respective ages of twenty-one years then I will and direct that such after born son or sons shall and may if he or they shall think proper upon attaining his or their respective ages of twenty-one years be admitted a partner or partners in the said trade in the place and stead of such of them my said sons E W and G as shall neglect or refuse to become a partner or partners therein or shall die as aforesaid or shall withdraw himself or themselves or be dismissed therefrom after his or their admission as a partner or partners therein as aforesaid And then and in such case such after born son or sons shall in lieu of the legacies and provisions lastly hereinbefore given to and made for him or them have the like share and proportion of the said trade and such and the same legacies and provisions and his and their widow and widows and child and children respectively shall be entitled in such manner as are hereinbefore given to and upon such and the like terms and conditions as are hereinbefore expressed in regard of each of my said sons E W and G and their respective wives and children upon their severally electing to become a partner in the said trade any thing hereinbefore contained to the contrary notwithstanding but my will and meaning is that with respect to admission into the said partnership on the event last aforesaid the eldest of such after born sons for the time shall be preferred to the younger of them.

If any son shall die before twenty-eight,

(30) Provided also and my will is and I do hereby direct that in case any of my said sons shall depart this life before he shall

attain the age of twenty-eight years leaving either a widow and one or more child or children him surviving then and in such RELATING TO case and so often as the same shall happen I do hereby direct that such account and valuation as aforesaid shall be made taken and settled and that the part or share of such of my said sons so dying of and in the said sum of pounds shall forthwith be raised and laid out and invested in the purchase of a competent share or competent shares of some of the parliamentary stocks or public funds of Great Britain in the names or name of my said trustees or trustee for the time upon such and the same trusts for the benefit of his widow and child or children and subject to the same powers provisoes and limitations over as are hereinbefore directed and shall not be deferred till all my sons shall attain the age of twenty-eight years any thing hereinbefore contained to the contrary notwithstanding.

CXXXIIa. THE TRADE OF TESTATOR.

leaving a widow, the account and valuation shall be taken immediately.

(31) And I do hereby direct that in case all my said sons If all testator's shall refuse or decline to carry on the said trade or business cline to engage then and in such case I do hereby direct that when all my said in trade, the trade shall be sons E W and G who shall live to attain the age of twenty- sold, eight years shall have attained that age and there shall be no after born son or sons or in case there shall be any after born son or sons when all my said after born sons who shall live to attain the age of twenty-two years shall have attained that age the said trade stock and effects employed therein shall be sold to the best advantage and the debts due and owing to the said trade shall be collected by my executors or the survivor of them his executors and administrators And from and immediately and after such after such sale as last aforesaid the said (trustees) and the sur-shall invest vivor of them and the executors and administrators of such survivor do and shall stand possessed of the money which shall arise by such sale and which shall be collected as aforesaid upon trust

sons shall de-

CXXXIII.
PROVISIONS
RELATING TO
THE TRADE OF
TESTATOR.

### CXXXIII.

Power of trustees to dissolve partnership and to enter into a new one.

Provided always And I do hereby declare that it shall be lawful for the said (trustees) and the survivor of them his executors and administrators at any time to determine any copartnership that may be subsisting at the time of my decease between me and any other persons or person and to continue the said trade or business either alone or in copartnership with any other person or persons or to discontinue the same altogether as to them or him shall seem most prudent and advantageous to the persons beneficially interested therein.

CXXXIV. PROVISIONS RELATING TO THE TRAISE OF TESTATOR.

### CXXXIV.

(1) And I hereby direct that in order to inconvenience as Power for little as possible the person or persons for the time being engaged as copartners with me it shall be from the tesin the said trade of a lawful for the said (trustees) or the survivor of them his executors ners in trade and administrators instead of calling in and compelling pay- ment of the ment immediately after my decease of the full value of my share share. and interest in the stock monies debts and effects of or belonging to the copartnership trade to accept and take from the person or persons for the time being engaged in the said trade such real and personal security as in the opinion of the said (trustees) or the survivor &c. shall be sufficiently ample for the payment of the value of the said share or of so much thereof as they or he shall think fit with interest for the same after the rate of five pounds for the one hundred pounds by the year.

trustee to actator's partfor the pay-

(2) And it shall be lawful for the said (trustees) or the sur- in money so vivor of them his executors and administrators not to call in secured until and compel the payment of the principal monies which shall be are exhausted. so secured until the other funds vested in the said (trustees) shall have been previously exhausted by them or him in paying and satisfying so far as the same extend my debts funeral and testamentary expenses and the provision and portions hereinbefore provided for my said wife and children.

Power to trustee not to call CXXXV.
PROVISIONS
RELATING TO
THE TRADE OF
TESTATOR.

### CXXXV.

Trusts of profits.

(1) And as to the clear gains and profits arising from the said trade or business do and shall stand possessed thereof upon the trusts following

Upon same trusts as residue(2) Upon trust to apply the same from time to time to and for the same person and persons purpose and purposes as are hereinafter declared respecting the residue of my personal estate.

Trust to pay annuity to wife out of the profits of trade, and proportional part from the last time of payment and her death, or the relinquishment of business.

(3) Upon trust that they the said (trustees) and the survivor of them his executors and administrators do and shall from time to time during the life of my wife MB with and out of the profits of the said trade or business levy and raise the annual sum of pounds clear of all deductions and abatements whatsoever and pay the same to her or her assigns by four equal the quarterly payments on the day of day of the day of and the day of in every vear together with a proportional part of such annual sum for the time which shall elapse between such of the said days of payment as shall immediately precede the day of the decease of my said wife or the day on which the said trade or business shall cease to be carried on under the trusts contained in this my will in respect thereof which shall first happen and the day of the decease of my said wife or the day on which the said trade or business shall so cease to be carried on as aforesaid (as the case may be) the first quarterly payment to commence and

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be made on such of the said days of payment as shall happen next after my decease.

CXXXV PROVISIONS RELATING TO THE TO A DE OF TESTATOR.

(4) And do and shall during the minority of my eldest son A B and if he shall so refuse to take the said trade or business as aforesaid during the minority of my second son B B (but with the consent in writing of my said wife during her life) and after her decease at their or his own discretion lay out and invest accumulate, so much of the said profits as shall remain after answering the purposes aforesaid and also the interest and dividends of the accumulations which shall be made from time to time in their or his names or name in the parliamentary stocks or public funds of Great Britain or at interest on government or real securities in England or Wales so that the same may accumulate at compound interest and do and shall with the consent in writing of my said wife during her life and after her decease at their or his discretion alter vary and transpose the said profits and the stocks and alter the funds and securities in which the same and the accumulations thereof. thereof shall from time to time be invested for or into other stocks funds and securities of a like nature.

Trust to invest the profits (subject to the purposes afore-said) in order that they may

(5) And I hereby direct that the profits and gains which shall arise or be made from or by the said trade shall in the first place be liable to answer interest after the rate of pounds per cent. per annum upon the net amount of the capital in cash and effects which shall be from time to time employed in the said trade including the debts owing to the trade of which interest a distinct account shall be kept and out of such interest my said wife shall have receive and be paid the amount hereinbefore given her or in trust for her as aforesaid and the said several sums hereinbefore directed to be allowed and paid for the maintenance and education of my said sons and daughters respectively shall be allowed deducted and paid And subject thereto respectively the said interest shall from time to time be laid out and invested upon government securities to be from time to time altered and varied at the discretion of my said trustees or trustee for the time being so that the same and the resulting income

Direction that the profits of trade shall first be liable to per cent. on the amount of the capital. stock which shall go to pay wife's annuity and maintenance of children.

And subject thereto to be invested and accumulated, CXXXV.
PROVISIONS
RELATING TO
THE TRADE OF

and divided in as many as testator's children, each of whom shall be entitled to a share.

One moiety payable at twenty-one, and the other at twenty-five.

and produce thereof may be accumulated in the way of compound interest until the same shall be divided amongst my sons as well those already born as those hereafter to be born in manner next hereinafter mentioned (that is to say) the same shall be divided into as many shares as I shall have children already born or hereafter to be born and when each of my said children shall attain the age of twenty-one years he or she shall have and be entitled to one of such shares and the same shall be paid to him or her as follows (that is to say) one moiety or half part or such share immediately on his or her attaining the age of twenty-one years and the other moiety or half part of such share together with the immediate accumulation of such moiety on his or her attaining the age of twenty-five years and each of such my said children shall from and after his or her attaining his or her age of twenty-one years also have and receive a proportionable part of the share of the interest to arise or accrue on the said capital after paying thereout the said annuity to my said wife and the several sums hereinbefore directed to be allowed and paid thereout as aforesaid.

Declaration that the residue shall be employed in carrying on business.

Provision for the survivorship or accruer of shares.

(6) And I do hereby declare my will to be that the residue of the said profits and gains upon the said capital as aforesaid shall from time to time be added to the said capital and shall be therewith employed in carrying on the said trade or business as hereinbefore directed Provided always that in case any of my said children shall depart this life under the age of twenty-one years then and in such case and so often as the same shall happen the part or share of such child so dving of and in the money so directed to be raised for interest and so to be invested and accumulated as aforesaid And also the future interest to accrue for the same shall be paid to and amongst the survivors or others of them (if more than one) share and share alike And if more than one of my said children shall depart this life under the age of twenty-one years then and in such case and so often as the same shall happen the surviving or accruing share or shares to which such child or children would on attaining the age of twenty-one years have become entitled under the clause

last hereinbefore contained shall again survive and accrue to the survivors or survivor or others or other of them my said sons in equal shares and proportions if more than one And in case all of them save one shall die under the age of twenty-one years then as well the whole of the interest to be invested and accumulated as the whole of such future interest to belong to such one or only child and to be an interest vested in him or her on his or her attaining the age of twenty-one years and to be paid to him or her at the respective times and in manner aforesaid.

CXXXV.
PROVISIONS
RELATING TO
THE TRADE OF
TESTATOR.

CXXXVI.

PROVISIONS

RELATING TO

THE TRADE OF

TESTATOR.

#### CXXXVI.

Trustees to take an account of the stock,

and continue the same yearly.

And I do hereby direct that the said (trustees) and the survivor of them his executors and administrators do and shall immediately after my decease cause a full true and just account in writing to be made and taken of all the capital stock and cash employed in the said trade and all the debts and things which shall be then belonging due or owing to the said trade and of all such debts which shall be due or owing from or by the said trade to any person or persons And do and shall cause a just valuation and appraisement to be made of all the particulars in the said account in order that the net amount of the capital then employed in the said trade may clearly appear. And that the said (trustees) and the survivor of them his executors and administrators do and shall on the day twelve months next after my decease or within one calendar month thence next following and so yearly and every year whilst the said trade shall be carried on by them in pursuance of the powers hereinbefore for that purpose contained on the same day or within one calendar month next afterwards cause to be made up and stated a full and accurate account statement and adjustment of the accounts of the said business And do and shall cause to be made and taken a like account in writing of all the stock monies debts and other things which shall be then belonging due and owing to the said trade and of all such debts as shall be due and owing from the said trade to any person or persons whomsoever do and shall cause a just valuation and appraisement to be made of all the particulars included in such account.

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CXXXVII COMMENCE-MENTS OF POWING

# CXXXVII.

# COMMENCEMENTS (a) OF POWERS.

(1) Provided always And I do hereby declare that it shall be Commencelawful for the said (trustees) or the survivor of them or the {ex-power to trusecutors administrators} and assigns of such survivor

(2) Provided always And I do hereby further declare that it Commenceshall be lawful for the said AB from time to time during his for tenant for life

(3) Provided always And I do hereby further declare that it Commerceshall be lawful for every person who by virtue of this my will shall to any tenant be tenant for life in possession of the said {manors} tenements and hereditaments hereinbefore devised or be entitled to the rents the trustees and profits thereof and who shall have attained his or her age rity of tenof twenty-one years and for the said (trustees) and the survivor ants for life and tenants in of them and the executors or administrators of such survivor tail. during the minority or respective minorities of any such tenant

ment of power for life if twenty one, and to during mino-

(a) For other commencements of powers, See Vol. I. Class Practical di-IV. p. 264. They may all be used in wills according to the rection. disposition of the property, with the trifling alteration of "And it is hereby declared and agreed between and by the parties to these presents" into "I do hereby declare."

CXXXVII. COMMENCE-MENTS OF POWERS. for life or of any person or persons who by virtue of this my will shall be entitled to the possession or to the receipt of the rents and profits of the said {manors} tenements and hereditaments

Commencement of power to trustees with consent of tenant for life.

(4) Provided always And I do hereby further declare that it shall be lawful for the said (trustees) or the survivor of them and the executors or administrators of such survivor at the request and by the direction in writing of every person who by virtue of this my will shall be tenant for life in possession of the {manors} tenements and hereditaments and who shall have attained the age of twenty-one years.

CXXXVIII. POWRAS.

#### CXXXVIII

#### POWERS.

(1) Provided always And I hereby further declare that it Power to trusshall and may be lawful for the said (trustees) and the survivor tees at the reof them and the executors and administrators of such survivor person enat the request in writing of any person who by virtue of this my and during will shall for the time being be tenant for life in possession or their own disentitled to the rents and profits of the said {manors} hereditaments and premises hereinbefore devised and who shall have attained the age of twenty-one years, and for the said (trustees) and the survivor of them his executors and administrators at their and his discretion during the minority or respective minorities of any such tenant for life or of any person or persons who by virtue of this my will shall be entitled to the possession or to the receipt of the rents and profits of the said {manors} hereditaments and premises

titled to rents. minority, at

(2) To join and concur with the person or persons for the Tomake partime being entitled to the other undivided part or share or parts or shares of the {manors} and hereditaments of which an undivided part or share undivided parts or shares is or are hereinbefore devised in making a partition of the entirety of the same hereditaments or any of them.

(3) To make sale and dispose of all or any part of the said To sell and ex-{manors} and hereditaments hereinbefore devised with the appurtenances in fee-simple to any person or persons whomsoever

change.

CXXXVIII

either together or in parcels and for such price or prices in money as the to said (trustees) and the survivor of them his executors and administrators shall seem reasonable or to exchange the same {manors} and hereditaments for any other {manors} messuages and hereditaments to be situate in England or Wales and upon every such exchange it shall be lawful for the said (trustees) or the survivor of them or his executors or administrators to pay or receive any sum or sums of money by way of equality of exchange [or partition.]

Power to revoke the existing uses, and limit new

(4) And for the intents and purposes aforesaid or any of them then it shall and may be lawful to and for the said (trustees) or the survivor of them his executors and administrators at such request and by such direction and so testified as aforesaid by any deed or deeds writing or writings to be by them or him sealed and delivered in the presence of and attested by two or more credible witnesses to revoke determine and make void all and every the uses estates trusts limitations powers provisoes and agreements hereinbefore limited declared and contained of and concerning the hereditaments so to be sold or exchanged for divided] or any part thereof and by the same or any other deed or deeds writing or writings to be by him or them sealed and delivered and attested as aforesaid to limit declare or appoint such use or uses estate or estates trust or trusts of the hereditaments the uses whereof shall be so revoked as shall be thought necessary or expedient to limit declare or appoint in order to effect such sale or exchange [or partition] as aforesaid.

And to give receipts.

(5) And it shall and may be lawful for the said (trustees) or the survivor of them or his executors and administrators to give and sign receipts for the money for which the same shall be so sold or so be paid for equality of exchange [or partition] which receipts shall be sufficient discharges to the person or persons paying the same respectively for the money for which the same shall be so given or for so much thereof as in such receipts shall be respectively acknowledged or expressed to be received and the person or persons paying the same respectively and taking such receipt or receipts for the same as aforesaid shall not afterwards

be obliged to see to the application or be in anywise answerable or accountable for any loss misapplication or nonapplication of such money or any part thereof And I hereby declare that they the said (trustees) or the survivor of them his executors or administrators shall pay and apply the monies arising from any such sale or exchange as aforesaid in or towards satisfaction and discharge of the incumbrances which shall then affect the said to discharge {manors &c.} by virtue of any charge to be made thereon in pursuance of any of the powers contained in this my will And shall (with the consent in writing of the person or persons for the time being entitled under this my will to the possession or to the rents issues and profits thereof if the same were then actually purchased and settled if such person or persons shall have attained the age of twenty-one years but if such person or persons shall be under the age of twenty-one years then at the discretion of the said (trustees) and the survivor of them his executors and administrators) lay out and invest the residue of the And invest said monies so received as aforesaid in the purchase of a clear residue in the purand indefeasible estate of inheritance in fee-simple in possession chase of lands, to be situate in England or Wales or of lands of a leasehold or copyhold tenure convenient to be held therewith or with any of the hereditaments hereinbefore devised or so to be purchased as aforesaid (such leasehold bereditament being held for an unexpired term of not less than sixty years) and as well as the hereditaments so to be purchased as the hereditaments so to be received in exchange [or by way of partition] as aforesaid shall to be settled thereafter forthwith be settled conveyed and assured to for and uses. upon such uses intents and purposes and with under and subject to such powers provisoes conditions and agreements as are hereinbefore limited expressed and declared of and concerning the hereditaments hereinbefore devised or as near thereto as the deaths of the parties and other contingencies or the circumstances of the case will then permit And so that if any of the hereditaments so to be purchased as aforesaid shall be held by lease or leases for lives or for years the same shall not vest absolutely in any person or persons respectively to whom an estate tail or estates tail is or are hereinbefore devised unless and

until such person or persons respectively shall attain the age

CXXXVIII. POWER

Application of monies to arise from mle, &c.

incumbrances.

CXXXVIII.

of twenty-one years or die under that age leaving issue inheritable under such estate tail or estates tail respectively. And I do hereby declare that if any of the hereditaments to be purchased as aforesaid shall be held by lease or leases for lives or for years provisions shall be inserted in the settlements to be made thereof as aforesaid to renew the same from time to time as occasion shall require And that the fees fines and expenses of such renewal or renewals shall from time to time be defraved out of the rents and profits of the hereditaments so to be purchased and of which such renewals are to be made respectively Provided always and I do hereby direct that in the mean time and until the monies to arise by such sale or sales or to be received for equality of exchange [or partition] as aforesaid shall be laid out and invested in a purchase or purchases in the manner hereinbefore mentioned it shall and may be lawful to and for the said (trustees) and the survivor of them his executors and administrators shall from time to time place out and invest such monies in the public stocks or funds or at interest upon government or real securities in England and Wales and from time to time alter vary sell transfer and dispose of the same for or into other stocks funds or securities of the like nature as often as they shall think proper and pay the interest and dividends arising from such stocks funds or securities to such person or persons or to such uses intents and purposes as the rents and profits of the hereditaments to be purchased therewith would go and be payable in case such purchase or purchases were actually made.

Power to in-

until purchase is effected.

and pay the interest to persons entitled to the rents and profits.

CXXXIX. POWERS.

## CXXXIX.

Provided always And I do hereby further direct that it shall Power to trusbe lawful for the said (trustees) or the survivor of them his ex- or rebuild and ecutors and administrators and as they or he shall think fit to surance. apply the (a) [rents and profits of the said {manors} and hereditaments] or so much thereof as to them or him shall seem proper in or about the repairing or rebuilding the said messuages or buildings hereby devised or such of them or such part thereof as shall for the time being require repairing or rebuilding and in or about affecting an insurance against any loss or damage to be sustained by fire upon such of the said messuages and premises as they or he shall think proper.

effect an in-

Variation for

<sup>(</sup>a) Or if personal estate be given as a trust fund, say, "interest dividends and annual produce of the said trust monies personal estate. stocks funds and securities."

CXL.

## CXL.

Power to enfranchise copyholds.

Power to give receipts for consideration money.

(Commencements, ante CXXXVII. p. 315. and Vol. I. XCVI. p. 264.) To enfranchise and for that purpose by any deed or deeds to be sealed and delivered by him or them in the presence of two or more credible witnesses to grant bargain sell release and confirm all or any of the {messuages &c.} holden by copy of court roll of all or any of the manors hereinbefore devised for such price or prices in money as the said (trustees) or the survivor of them his heirs or assigns shall think reasonable and also upon payment of the money to arise by any such enfranchisement or enfranchisements to give a proper receipt or receipts for the consideration money thereof such receipt or receipts to be an effectual discharge or effectual discharges to any person or persons paying the same for so much money as shall be expressed to be received therein and the person or persons paying such money as aforesaid shall not be bound to see to the application of the same monies or be responsible for the loss misapplication or nonapplication of the same any part thereof And I hereby further declare that when any of the said premises shall be so enfranchised and such proper receipt or receipts be given for the consideration money on such enfranchisement the freehold of all and every the {messuages &c.} so enfranchised shall be and remain for ever from thenceforth freed and absolutely discharged of and from all and every the uses trusts limitations powers provisoes declarations and agreements hereby limited declared and expressed and also of and from all fines heriots suits customs and customary services from thenceforth to grow due or which otherwise would grow due to the lord or lords lady or ladies of the said manor yet so that upon every such enfranchisement grant bargain sale release and confirmation there shall be reserved and made payable to the lord or lords lady or ladies of the said manor for the time being such yearly rents and payments by way of chief rents or quit rents as by them the said (trustees) or the survivor of them or the heirs and assigns of such survivor shall be deemed to be as good and beneficial as the yearly rents customary or annual payments suits or services and privileges which are now paid or rendered to or enjoyed by the lords and ladies of the said manor for the time being.

CXL.

CXLI.

## CXLL.

Power to lease for twenty-one years.(a)

(Commencements, see ante CXXXVII. p. 315. and Vol. I. Class IV. XCVI. p. 264.) By any indenture or indentures either referring or not referring to this present power to be sealed and delivered by him her or them respectively in the presence of and attested by two or more credible witnesses to limit or appoint by way of demise or lease all or any part or parts of the said {manors &c.} hereinbefore devised with their rights members and appurtenances to any person or persons for any term or terms of years not exceeding twenty-one years to take effect in possession and not in reversion or by way of future interest so as there shall be reserved in every such limitation or appointment by way of demise or lease the best or most approved yearly rent or rents to be incident to the immediate reversion of the hereditaments so to be limited or appointed that can be reasonably had or gotten for the same without taking any fine or premium or foregift or any thing in the nature thereof And so that the lessee therein named do thereby covenant for the due payment of the rent or rents thereby reserved. And so that there be contained in every such limitation or appointment a clause in the nature of a condition of re-entry for nonpayment of the rent thereby reserved by the space of twenty-one days next after the same shall become due And so that the lessee therein named do execute a counterpart thereof And be not by any clause or words exempted from punishment for committing waste any thing hereinbefore contained to the contrary thereof notwithstanding.

<sup>(</sup>a) For other leasing powers, see Vol. I. Division J.

CXLII DOW PDQ

#### CXLII.

(Commencements, see ante CXXXVII. p. 315. and Vol. I. Class Power to lease IV. XCVI. p. 264.) By any indenture or indentures [or by copy or copies of court roll] to be sealed and delivered by him [her or them] in the presence of and attested by two or more credible witnesses to limit or appoint by way of demise all or any part or parts of the said {manors &c.} hereinbefore devised with their appurtenances to any person or persons for one two or three lives or for any term or number of years determinable on the death or deaths of one two or three person or persons in possession or in reversion but so that there be not at any one time more than three lives in being whereon such appointments shall respectively depend and to accept or take any fine or premium for the making or granting of every such limitation or And so that upon every such limitation or appointment appointment the usual and accustomed rents heriots and services at the least or proportional rents heriots and services where a greater or smaller part of any farm or farms tenement or tenements shall either separately or together with any other part or parcel of the same premises or other lands be limited or appointed or rents heriots or services amounting in the aggregate to the usual rents heriots or services where two or more farms or tenements shall be granted or leased together be reserved and made payable during the continuance of such limitations or appointments And so that the lessee therein named do thereby covenant for the due payment of the rent or rents thereby reserved And so that there be in every such grant or lease [other than upon grants or leases by copy of court roll] a clause in the nature of a condition of re-entry for the nonpayment of the rent thereby reserved by the space of twenty-one days next after the same shall become due And so as the lessee therein named do execute a counterpart thereof And be not by any clause or words exempted from punishment for committing waste.

for three lives.

CXLIII.

## CXLIII.

Power to grant building leases.

(Commencements, see ante CXXXVII, p. 315. and Vol. I. Class IV. XCVI. p. 264.) By any indenture or indentures either referring or not referring to this present power to be sealed and delivered by him her or them respectively in the presence of and attested by two or more credible witnesses to limit or appoint by way of demise or lease all or any part of the said {manors &c.} hereinbefore devised with their rights members and appurtenances to any person or persons who shall be willing to improve the same by erecting or building thereon any new house or houses erections or buildings or to repair or rebuild any of the messuages tenements or buildings whatsoever which now are or hereafter shall be standing or being on the same hereditaments or any part thereof or to expend such sum and sums of money in the improvement thereof respectively as shall be thought adequate with liberty to take or pull down any messuages tenements erections or buildings then standing or being on the hereditaments so to be limited or appointed by way of demise or lease for the purpose of rebuilding or new building for any term of years not exceeding ninety-nine years to take effect either in possession or immediately after the determination of the subsisting leases for the time being of the same hereditaments So that in every such limitation or appointment by way of demise or lease there be reserved the best and most improved yearly rent or rents the nature and circumstance of the case being considered to be incident to the immediate reversion of the hereditaments so to be limited or appointed

CXLIII.

by way of demise or lease as aforesaid without taking any fine premium or foregift for the making thereof or any thing in the nature thereof. And so that the lessee or lessees therein named do thereby covenant for the due payment of the rent or rents thereby reserved and for the repairing rebuilding or keeping in repair the messuages or tenements erections and buildings thereon or to be erected thereon as aforesaid. And so that there be contained in every such limitation or appointment a clause in the nature of a condition of re-entry for nonpayment of the rent or rents thereby reserved by the space of twenty-one days next after the same shall become due. And so that the lessee therein named do execute a counterpart thereof.

CXLIV.

## CXLIV.

Power to trustees to lease freeholds or leaseholds until they are sold. And I declare that if the said {messuages or tenements} hereditaments and premises hereinbefore devised and bequeathed or
any of them or any part thereof shall at any time before the
same shall be sold as aforesaid become untenanted it shall be
lawful for the said (trustees) or the survivor of them or the heirs
executors administrators or assigns of such survivor by deed to
demise or lease the premises which shall for the time being be
untenanted to any person or persons whomsoever for any term
or number of years not exceeding [seven] years to be computed
from the making thereof so that there be contained in every
such lease or demise a condition for re-entry on nonpayment of
the rent or rents thereby reserved for the space of twenty-one
days next after the same shall become payable And so that the
lessee named therein do thereby covenant for payment of the
said rent and do execute a counterpart thereof.

CXLV. POW PRS.

#### CXLV.

Provided always And I hereby declare that (a) if my said [daughters] Mary and Jane or the survivor of them shall at any time whilst they or she shall be so entitled to the rents issues and profits of the said [copyhold] {messuages} and hereditaments be tled to rents] desirous to have the same sold and shall signify such desire in tate. writing to the said (trustees) or the survivor of them or the executors administrators and assigns of such survivor then and in that case the said (trustees) or the survivor of them or the executors administrators and assigns of such survivor do (b) and shall with all convenient speed absolutely sell the said [copyhold] {messuages} and hereditaments either together or in parcels and either by public auction or private contract and for such price or prices as to them or him shall seem fit and reasonable with liberty for them or him to buy in and resell the same at any future auction and to-convey and assure the same unto the purchaser or purchasers thereof or as he or they shall direct and to receive the monies arising from the sale or sales thereof and give effectual discharges for the same and exonerate the said purchaser or purchasers from all liability in respect of the application thereof And do and shall lay out &c. (trust to invest and vary ante p. 208) And do and shall stand possessed of and in- Invest and terested in the said stocks funds and securities upon which the possessed of same shall be invested upon and for the trusts intents and purposes hereinafter declared (that is to say)

tees [if it shall be desired by to sell real es-

vary and stand sums upon cer-

Practical directions.

<sup>(</sup>a) If the property is to be sold at all events, omit this part of the clause.

<sup>(</sup>b) Where copyholds are to be sold, they should never be devised to trustees for that purpose, but a power to sell should be given them, in order to avoid the liability to a double admittance. first of the trustees, and then of the purchaser. See Holder v. Preston, 2 Wils. 400. Trusts for sale, as ante, p. 196. (1). are generally more advantageous for other kinds of property.

CXLVI.

## CXLVI.

Direction that trusteesshould receive rents until premises are sold for the benefit of persons entitled to interest. (a) And I hereby direct that until the said [copyhold] {messuages} and hereditaments shall be so sold under the power hereinbefore contained the said (trustees) or the survivor of them his heirs and assigns shall receive the rents and profits thereof for the benefit of the person or persons to whom and to be applied for the purpose or purposes for which the interest dividends and annual produce of the monies to arise from the sale of the said [copyhold] premises would be payable if the same were actually sold and the monies invested as hereinbefore is directed.

CXLVII.

#### CXLVII.

Power to A B to cut timber to a certain amount. (b)

Provided always And I do hereby declare that it shall be lawful for the said A B from time to time of his own authority to fell cut down and dispose of and convert into money for his own use and benefit so much of the timber-trees pollards and other trees for the time being standing and being upon the said here-ditaments and which shall be at their full growth and height of improvement or in a state of decay as shall produce or amount to the sum of pounds and no more.

Heir-at-law.

<sup>(</sup>a) It is hardly necessary to insert this direction, as without it the heir at law will be a trustee for the persons interested under the will. See Yates v. Compton, 2 P. Wms. 308, 6th edit and the cases there cited by the editors.

<sup>(</sup>b) See trusts of term to authorize trustees to cut timber, ante, p. 199. (13).

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CXI.VIII. POWERS.

## CXLVIII.

(1) Provided also that it shall be lawful for [the said A B Power to AB, (a) as and when by virtue of my will he shall be in the actual &c. possession of the said {manors} and hereditaments hereinbefore devised or entitled to the rents and profits thereof ] by any deed or instrument in writing sealed and delivered by him [respectively] in the presence of and attested by two or more credible witnesses or by his last will and testament in writing or by any codicil thereto signed and published by him [respectively] in the presence of and attested by three or more credible witnesses (but subject to the uses and estates antecedent to the use of the person for the time being making such charge and the powers annexed to such antecedent uses and estates and also subject to the uses or estates to be limited in exercise of the said powers)

(2) To charge the said {manors} and hereditaments or any To charge prepart thereof with the payment of any annual sum not exceedpounds but clear of all deductions whatsoever to any usual powers for securing it. ing woman whom he shall marry for her natural life for the jointure of such woman to be payable yearly or half-yearly with usual powers of distress and entry and detention of possession and perception of rents and profits.

mises with

jointure, with

(a) Or it may be, "my said son and every other male person who shall be tenant for life of the said {manors} and hereditaments under the limitations hereinbefore mentioned."

Variations for any tenant for

Or it may be,

<sup>&</sup>quot;any tenant for life of the said {manors &c.} hereinbefore devised under the limitations hereinbefore contained at any time or times from time to time whether he shall be in the actual possession of the said hereditaments or not"

CXLVIII.

And appoint premises for a term of years for further securing jointure. (3) And also (but subject as aforesaid) to limit and appoint the said {manors} and hereditaments so to be charged as aforesaid to any person or persons for any term or terms of years Upon the usual trusts for securing the payment of the annual sum to be charged so that every such term of years be made to cease on payment of the annual sum thereby respectively secured and all expenses to be incurred by the nonpayment thereof respectively. (a)

To charge with portions for younger children.

(4) [And also (but subject as aforesaid)] (or commence as above 1) to charge the said {manors} and hereditaments or any part thereof with any sum of money for the portion or portions of any child or children of his body (other than or besides an eldest or only son for the time being entitled to the said {manors} and hereditaments for an estate in tail male in possession or in remainder immediately expectant on the decease of his parent exercising this present power) not exceeding in the whole the (b) sums hereinafter mentioned (that is to sav) If but one such child the sum of pounds If two such children and no more then the sum of pounds and if three or more such children then the sum of pounds and with interest for the same respectively at any rate not exceeding five pounds for the one hundred pounds by the year the said sums of pounds pounds and

If but one the sum of pounds, if two the sum of pounds, and if three or more the sum of pounds,

pounds and pounds as the case shall happen to be vested in and payable to such child or children [respectively] at such age or respective ages days or times and if more than one in such shares and portions or to one or more exclusively of the other or others and with such conditions and limitations over for the benefit of any other or others of the said child or children respectively and in such manner as the said [person for the time being exercising the said power] shall think proper and shall by

Variation for one sum.

<sup>(</sup>a) For proviso that a larger sum than pounds shall not be charged, see Vol. I. Class IV. p. 270. And see p. 333.

<sup>(</sup>b) Or if one certain sum is to be raised independently of the number of the children, say,
"the sum of pounds the said sum of pounds or such

smaller sum as shall be charged under this present power to be vested in &c." as above.

CXLVIII. POWERS.

same by a term

any deed or deeds instrument or instruments in writing so sealed and delivered and attested as aforesaid or by his last will and testament in writing or any codicil thereto so signed and published and attested as aforesaid appoint And also (but subject and secure the as aforesaid) to appoint all the said {manors} and hereditaments of years, or any part thereof so to be charged as last hereinbefore is mentioned to any person or persons for any term or terms of years without impeachment of waste Upon trust to raise the monies so to be charged by sale or mortgage or by or out of the rents and profits of the same hereditaments in the mean time and until such sale or mortgage shall be made or by both the aforesaid means but so that the term or terms of years so to be appointed be made to cease (a) or be made redeemable on full payment of the money so to be charged and the interest thereof and all costs and charges incident thereto by means of such sale or mortgage as aforesaid by the person or persons for the time being entitled to the freehold or inheritance of the premises so to be appointed or by any other means whatsoever.

(5) Provided always and I do hereby declare that the said Proviso that {manors} and hereditaments hereinbefore devised shall not by premises shall only be liable virtue of the aforesaid powers [of jointuring] and charging with to the payportions be liable to the payment of more than [the principal sum [pounds for pounds for jointures] and more than the principal sum of Ωf pounds for portions at any one time And therefore if by vir-

tue or in exercise of any of the aforesaid powers the said hereditaments or any part thereof shall be charged with [a greater annual sum for jointures than pounds or with] a greater sum for the portions of younger children than pounds and the

interest thereof then the payment of the sums respectively occasioning such excess or such part thereof respectively as shall

jointures and] for portions.

<sup>(</sup>a) Or it may be, " cease as to all the premises therein comprised (except such of Variation. them as may be sold or mortgaged under the trusts to be declared thereof) on the performance of the said trusts or on their becoming unnecessary or incapable of taking effect and on satisfaction of all costs."

CXLVIII. POWERS.

occasion the excess shall during the time of such excess be suspended.

Proviso that no jointure shall take effect until person making it shall come into possession,

(6) But I hereby declare that if any tenant or tenants for life under the limitations hereinbefore declared shall at any time or times hereafter before they respectively shall be in the actual possession or entitled to the actual receipt of the rents and profits of the {manors} and hereditaments hereby devised shall in exercise of the power hereinbefore enabling them respectively in that behalf limit or appoint to any woman or women whom he or they may marry any annual sum or annual sums by way of jointure as aforesaid Then and in every such case the said annual sum or annual sums shall not take effect upon or charge the said hereditaments or be payable unless and until the person or persons so limiting or appointing the same respectively as aforesaid shall become or if living would have become under the limitations hereinbefore declared entitled to the actual receipt of the rents and profits of the same hereditaments any thing hereinbefore contained to the contrary notwithstanding.

Proviso that no charge of portions shall take effect until person making it shall come into possession.

(7) But I do hereby declare that if any tenant or tenants for life under the limitations hereinbefore declared shall at any time or times hereafter before they respectively shall be in the actual possession or entitled to the actual receipt of the rents and profits of the said {manors} and hereditaments hereby devised in exercise of the power hereinbefore enabling them respectively in that behalf subject and charge the said {manors} and hereditaments or any of them or any part thereof to and with the payment of any sum of money for a portion or portions Then and in every such case the said sum or sums of money shall not be a lien or charge upon the said hereditaments or become vested in or payable to any person or persons whomsoever unless and until the person or persons so charging the same hereditaments as aforesaid or some one or more of his or their issue respectively shall under the limitations hereinbefore declared become entitled to the actual possession or to the receipt of the rents and profits of the same hereditaments any thing hereinbefore contained to the contrary thereof notwithstanding.

CXLIX. POWERS.

## CXLIX.

Provided also and I hereby further declare that it shall be Powerto grant lawful for each and every of my daughters who under the rent-charge to limitations hereinbefore contained shall be tenant for life of the said {manors} and hereditaments whether covert or sole at any time or from time to time by any deed or deeds to be sealed and delivered by her in the presence of and to be attested by two or more credible witnesses or by her last will and testament in writing or any writing in the nature of a last will and testament or any codicil or codicils thereto to be respectively signed and published by her in the presence of three or more credible witnesses to limit or appoint to the use of or in trust for any husband whom she may marry for whom she shall have married all or any part of the said {manors} and hereditaments hereinbefore devised for the life of such husband or for any less estate (subject to the then subsisting charges on the said premises) or any annual sum or rent-charge not exceeding the sum of pounds of lawful money of Great Britain and Ireland during his life to be issuing out of all or any part of the said {manors} and hereditaments and to be paid quarterly at such place or places with such powers of distress and entry and such terms of years for better securing the said rent-charge and perception of the rents and profits of the said {manors &c.} and in such manner as my said daughter or daughters shall think fit and such life estate or rent-charge to take effect immediately after the decease of my daughter or daughters respectively limiting or appointing the same But I direct that no such limitation or appointment shall be made to take effect in possession unless my said daughter or daughters respectively making the same shall then be in possession of the said {manors} and hereditaments or unless or until she or some issue of hers shall afterwards come into possession of the said {manors} and hereditaments hereinbefore devised or be entitled to the rents issues and profits thereof.

life estate or husband.

CL.

CL.

Power to trustees during minority to appoint stewards.

Provided always And I do hereby declare that it shall be lawful for the said (trustees) and the survivor of them and the executors and administrators of such survivor during such time and from time to time as any person for the time being entitled under this my will to the actual possession or to the receipt of the rents and profits of the {manors messuages} hereditaments and premises hereinbefore devised or any part thereof shall be under the age of twenty-one years and unmarried to appoint such person or persons as they or he shall think proper for the purpose of managing overseeing and improving the said {manors &c.} and of collecting and getting in the rents and profits thereof or such part thereof to which such person shall be entitled as aforesaid And to allow to such person or persons to be so appointed as aforesaid such salary or salaries as to the said (trustees) or the survivor of them or the executors or administrators of such survivor shall seem proper.

CLI. POWERS.

## CLI.

I do hereby further direct that if any of my sons now or here- Power to trusafter to be born shall wish to engage in any trade or business in which a sum of money in addition to his or their portion or ney to any of portions under this my will shall be necessary it shall be lawful tor's sons to for the said (trustees) or the survivor of them and the executors trade. administrators and assigns of such survivor at their or his discretion to advance to such son or sons from and out of my personal estate any sum or sums of money not exceeding in the whole the pounds either on landed security or upon the security sum of of his or their bond or bonds Provided always and I hereby expressly direct that such sum shall not be advanced by my said (trustees) or the survivor of them or the executors administrators and assigns of such survivor unless they or he shall think the trade or business in which such of my sons shall desire to engage a safe and desirable speculation and likely to enable such son to repay the sum so to be advanced in a reasonable time after it shall be lent.

a sum of mothe said testaCLII.

#### CLII.

Power to trustees, if son-inlaw shall need a sum of money to advance it out of the portion bequeathed to his wife. I do hereby further direct that if the said AB my son-in-law hereinbefore mentioned shall either from distress or for the carrying on his trade have occasion for a sum of money it shall be lawful for the said (trustees) and the survivor of them and the executors administrators and assigns of such survivor if they or he shall think fit from time to time to lend and advance a sum or sums of money not exceeding at any one time the sum of

pounds or altogether the sum of pounds to the said AB on the security of his bond or obligation such sum or sums to be paid and payable from and out of the portion or portions hereinbefore respectively bequeathed by me to my said daughter E the wife of the said AB for her sole and separate use if my said daughter E shall consent to such loan in writing And I declare that the said (trustees) and the survivor of them and the executors administrators and assigns of such survivor shall stand and be possessed of and interested in the sum or sums which shall be so lent and advanced to my said son-in-law as aforesaid and the security or securities for the same upon and for the same trusts intents and purposes as are hereinbefore expressed of and concerning the said trust monies stocks funds and securities out of which such loan or loans shall be so made.

CLIII. NWERS

## CLIII.

(1) Provided always And I do hereby declare that it shall Power to trusbe lawful for the said A B at any time or times during her life(a) pointment of by any deed or deeds or by her last will and testament in writ- AB to ran ing or any codicil thereto to direct the said trustees or trustee for pounds as she the time being to levy and raise at any time or times either in proper. her lifetime or after her decease out of the said trust monies stocks funds and securities any sum or sums of money not exceeding in the whole the sum of pounds of lawful money of Great Britain and Ireland and to pay apply and dispose of the sum or sums which shall be so raised to or for the benefit of such person or persons and in such manner as she the said A B shall think proper And I do hereby direct the said trustees or trustee for the time being to levy and raise and pay apply and dispose of such sum or sums accordingly.

AB to raise

(2) Provided nevertheless that if the said AB shall marry Such sum not after my decease no such sum or sums shall be raised by the to be raised in said trustees or trustee for the time being notwithstanding any marriage.(b) appointment made by her for that purpose during her widowhood.

case of second

<sup>(</sup>a) If this power is confined to the widowhood of a female, Wife. say,

<sup>&</sup>quot;during her widowhood." (b) This proviso is seldom applicable to any other person than wife. the wife of the testator.

CLIV.

## CLIV.

Power to the trustees to raise the sum of pounds for AB.

Provided always And I do hereby declare that if my said son AB shall attain the age of twenty-one years [and survive my said wife CB] then and in such case the said (trustees) shall when and so soon as the said AB shall so attain the said age of twenty-one years or my said wife shall depart this life which shall last happen levy and raise out of the said trust monies stocks funds and securities the sum of pounds and pay the same to the said AB his executors administrators and assigns [in addition to the other provision made for him by this my will.]

CLV.

## CLV.

Power to trustees to raise the sum of pounds for daughter, or any other woman. Provided always And I do hereby further declare that if my said daughter MB shall attain the age of twenty-one years or marry under that age with the consent of her guardian or guardians [and shall survive my said wife EB] then and in such case the said (trustees) shall when and so soon as the said MB shall so attain the said age of twenty-one years or marry under that age which shall first happen in case my said wife shall be then living then when and so soon as my said wife shall depart this life levy and raise out of the said trust monies stocks funds and securities the sum of pounds and pay the same to the said MB her executors administrators or assigns [in addition to the other provision made for her by this my will.]

CI.VI. POWERS.

# CLVI. (a)

(1) Provided always And I hereby declare that if the trus- Power to tees appointed in this my will or to be appointed under this pre- tees. sent provision or any of them or their or any of their heirs executors administrators and assigns shall die or be desirous of being discharged from or refuse or decline or be incapable to act in the trusts hereby in them respectively reposed as aforesaid before the same shall be fully executed then and in every such case it shall and may be lawful to and for [the(b) said AB during his life and after his decease to and for the said trustees or the surviving or continuing trustee appointed by this my will whether they or he shall accept the trusts thereof or shall (c) renounce the same or for the trustees or the surviving and continuing trustee to be appointed under this present provision or the executors or administrators of such last surviving or continuing trustee [by any deed or deeds instrument or instruments in writing to be by them him or her sealed and delivered in the presence of and attested by two or more credible witnesses (d) from time to time to nominate and appoint any fit person or persons to be a trustee or trustees in the stead or place of the trustee or trustees so dying or desiring to be discharged or becoming un-

rections.

<sup>(</sup>a) If the clause making trustees receive sufficient discharges Practical dihas not been inserted before, it should be placed here.

<sup>(</sup>b) This power must depend on the circumstances of the case. See Vol. I. Division J. p. 77.

<sup>(</sup>c) See Sharp v. Sharp, 2 B. & A. 405.

<sup>(</sup>d) This may be omitted if brevity is particularly desired.

CLVI.

The trust premises to be conveyed to the new trustees with the like powers.

willing or incapable to act as aforesaid And when and so often as any new trustee shall be nominated and appointed as aforesaid all the trust estates monies and premises or such of them as shall then be subject to the trusts and provisions aforesaid which shall have vested in such trustees or trustee so dying desiring to be discharged or becoming unwilling or incapable to act as aforesaid shall be thereupon with all convenient speed conveyed assigned and transferred so and in such manner as that the same shall and may be legally and effectually vested in the person or persons so to be appointed as aforesaid either solely or jointly with the surviving or continuing trustees or trustee as occasion shall require To the uses and upon and for the trusts intents and purposes hereinbefore expressed and declared or such of them as shall be then subsisting undetermined and capable of taking effect and the person or persons so to be appointed as aforesaid shall have and be entitled to exercise the same powers and authorities as if he or they had been appointed a trustee or trustees of this my will.

Trustees to be chargeable only for the monies they receive.

Direction that trustees shall only be responsible for their own acts. (2) Provided (a) always And I do hereby further declare that the trustees of this my will hereby appointed and to be appointed as aforesaid and each and every of them and each and every of their heirs executors and administrators shall be charged and chargeable for such monies only as they respectively shall actually receive by virtue of the trusts hereby in them reposed notwithstanding their or any of their giving or joining in giving any receipt or receipts for the sake of conformity And I direct that none of them shall be answerable or accountable for any banker or broker with whom the said trust monies and premises

Trustee clauses.

<sup>(</sup>a) This clause is universally inserted in wills. It is however, of little utility, as a court of equity will equally protect trustees, whether it is inserted or not. Such clauses, however, are often, very serviceable in inducing trustees, ignorant of their equitable protection, to act under the trusts of the will.

tion thereto.

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shall be placed for safe custody or for any default or neglect of the others or other of them or for involuntary losses And also that it shall and may be lawful for them with and out of the And that trusmonies which shall come to their respective hands by virtue of tain all costs. the trusts aforesaid to retain and reimburse themselves respectively and also to allow their respective co-trustees or co-trustee all costs charges damages expenses and fees to counsel for advice which they or any of them shall or may sustain expend or disburse in or about the execution of the aforesaid trusts or in rela-

CLVI. POWERS.

tees shall re-

CLVII.
PROVISORS
AND
DECLARATIONS

## CLVII.

#### PROVISORS AND DECLARATIONS.

Proviso that every person taking under the limitations hereinbefore mentioned, and the husbands of such as are females shall take and bear a certain name and arms, and do all acts necessary for that purpose.

Provided always And I hereby declare that every person and persons who by virtue of the limitations hereinbefore contained or of this proviso or of any proviso hereinafter contained shall become entitled to the possession or to the receipt of the rents and profits of the said {manor &c.} hereby devised and the husbands of such of them as shall be females [and who for the time being shall not be a peer or heir-apparent or heir-presumptive of a peer] shall apply for and endeavour to obtain an act of parliament or proper licence from the crown or take such other ways or means as may be requisite or proper to enable or authorise him to take the surname of only and no other surname and to quarter the arms of with his own family arms within the space of three calendar months next after they respectively shall become entitled to the possession of the rents and profits thereof And also that every other person who under or by virtue of the limitations hereinbefore contained or of these presents shall be entitled to the receipt of the rents and profits of the said {manors &c.} and hereditaments hereby devised shall within one year after he shall become so entitled to the possession or the receipt of the rents and profits of the said {manors &c.} and hereditaments apply for and endeavour to obtain an act of parliament or proper licence from the crown or take such other ways or means as shall be requisite or proper to enable or authorise him to take and use the surname of and no other surname and to quarter the arms of with his own family arms And that in case any such person or persons shall refuse or neglect to take such surname and arms and to take or use the ways or means which may be requisite or proper to enable or authorise him or them so to do by the space of one year to be computed as aforesaid then if the person so refusing or neglecting shall be the husband of such female so entitled as aforesaid under the limitation hereinbefore contained to the use of such female and the heirs of her body whose husband shall so refuse or neglect and his heirs male shall cease determine and be absolutely void and in case the person so neglecting or refusing shall be any other person than such husband as aforesaid the limitation hereinbefore contained to the use of such person and the heirs male of his body shall be absolutely void and the said {manors &c.} and hereditaments And the lands shall in either of such cases immediately thereupon go to the person next beneficially entitled in remainder under the limitations hereinbefore contained in the same manner as if the person or persons whose estate or estates shall so cease determine and become void being tenant or tenants in tail was or were dead ser. without issue inheritable under such entail without prejudice nevertheless to any jointure or jointures portion or portions sum or sums of money lease or leases which previously to such cesser or determination shall have been charged made or created by virtue or under exercise of any of the powers hereinbefore contained And I hereby further declare that the cesser or de- Declaration termination of any estate or estates of any tenant or tenants for life by virtue of the proviso hereinbefore contained shall not estate shall operate to exclude prevent or prejudice any of the contingent any contingent remainders hereinbefore limited to the son or sons daughter or the trustees daughters of such tenant or tenants for life or any other person or persons but that the remainder hereinbefore limited to the life so resaid trustees and their heirs during the life of every such tenant dead. for life shall after such cesser or determination take effect and continue for preserving such contingent remainders and giving them effect as they may arise and that immediately from and after such cesser or determination of such preceding estate or estates for life or lives and during the suspense and contingency of such their expectant remainder the said (trustees) and their heirs shall receive pay and apply the rents and profits of the said

CLVII. AND DECLARATIONS

And if any person shall refuse so to do. the limitation to them shall be void.

shall go over, as if such person were dead without issue, without prejudice to any charge created before the ces-

of any life not prejudice remainder, but shall pay rents as if tenant for fusing were

CLVII.
PROVISOES
AND
DECLARATIONS

{manors} and hereditaments which would belong to such tenant or tenants for life if such cesser or determination had not taken place unto the person or persons for the intents and purposes and in the manner to for and in which the same rents and profits would be or would have been payable or applicable under or by virtue of the limitations and provisions hereinbefore contained in case such tenant or tenants for life was or were actually dead so that from and immediately after such cesser or determination the issue of each such tenant or tenants for life entitled for the time being under the limitations aforesaid to the said manor and other hereditaments in remainder immediately expectant upon the decease of such tenant or tenants for life may be entitled to the rents and profits of the said manors and other hereditament for his and their own use and benefit during the life of the parent as if such parent were dead and in case no such issue be in existence then during the non-existence or contingency of such issue the person next beneficially entitled for the time being under the limitations aforesaid to a vested remainder in the said {manors &c.} and hereditaments expectant upon the decease of such tenant or tenants for life and failure of his her or their issue shall and may be entitled to the said rents and profits for his and their proper use and benefit respectively but without any exclusion of or prejudice to the estate interest or right of any such issue afterwards coming into existence but only from the time of the birth of such issue respectively. (a)

<sup>(</sup>a) As to this clause, see ante p. 174. n. (c).

o IIV FO PROVISORS AND DECL A D ATTOMS

## CLVII. a.

(1) Provided always that if by virtue of any (a) of the limi- Provision for tations hereinbefore contained my said son (b) AB or the issue estate on the male of his body shall become actually entitled to the posses- accession of another ession or to the receipt of the rents and profits of my said estate tate. in the county of C and any other of my younger sons or any issue male of any such younger son shall be then living or shall thereafter come into existence then and in that case and from time to time the uses hereinbefore limited in favour of the said A B and his issue male of and in my said estate in the county of W shall absolutely cease and determine as if such said AB were dead without issue male of his body But my will is that if by virtue of this proviso my said estates in the said county of W shall have shifted from my said son AB or from his issue male and there shall afterwards be a failure of issue male of all my younger sons entitled under the limitations hereinbefore contained then and in that case my said estate in the said county of W shall return to remain and be to the use of my said son AB for his life without impeachment of waste and after his decease to his sons successively according to

Variation for

<sup>(</sup>a) Or it may be, "by virtue of any of the limitations in the said hereinbefore re- Variations. cited settlement contained."

<sup>(</sup>b) Or it may be, according to the circumstances, "the second or any other son of the said AB or the issue second or other male of the second or any other son of the said A B."

CLVII a.
PROVISORS
AND
DECLARATIONS

their respective seniorities in tail male but so that my said estate in the said county of W shall be still subject to this provise in case any such issue shall be thereafter born.

Direction that if a second estate shall devolve on son, he is to have the same powers over it as are given him over the first.

(2) And I hereby direct that if my said son AB or any other of my said sons shall become tenant for life in possession of my said estate in the county of C before he shall have exercised the powers hereinbefore given and limited of charging the said estate in the county of W with jointures and portions the said powers shall cease and determine and the said AB and my said other sons so respectively becoming entitled as aforesaid shall have such and the same powers over my said estate in the said county of C as are hereinbefore given and limited over my sail estate in the said county of W And if my said son AB or my other of my said sons shall become tenant for life in possession of the said estate in the said county of C after he or they shall have exercised the said powers or either of them then and in that case the jointures and portions which shall have been so charged by him or them respectively on my said estate in the said comty of W and the powers remedies and term and terms of years which shall have been given and created for securing the same shall absolutely cease determine and be of no effect and the said estate in the county of C shall be charged with the same.

CLVIII. PROVISORS AND DECLARATIONS

## CLVIII.

And I hereby declare that the devise and bequest hereinbefore that devise made by me to or in favour of the said AB and his issue male and bequest to AB are made are upon this condition that he the said AB and his issue male on the condido acquiesce in the devises hereinbefore made by me of the said acquiesce {manors} hereditaments and premises at C and that he and they do all such acts as shall be necessary or expedient for giv- to effect, ing effect to the same And if he or they shall neglect or refuse so to do then I devise the said hereditaments and premises situate at D to the said (trustees) their heirs and assigns upon the trusts hereinbefore expressed and contained of and concerning the same that is to say

tion that he therein, and carry same inCLIX.
PROVISOES
AND
DECLARATIONS

## CLIX.

Declaration that trustees shall lay out money in freehold, copyhold, or leasehold estates. (1) And I do hereby direct that the said A B and C D and the survivor of them and the executors administrators and assigns of such survivor do and shall lay out and invest the (a) {money arising from such sale} in the purchase of freehold copyhold or leasehold manors messuages lands tenements and hereditaments in England or Wales and settle and assure the estates so to be purchased to the uses upon and for the trusts intents and purposes and with under and subject to the powers provisoes and declarations hereinafter expressed and contained or as near thereto as the nature and quality of the estate and the deaths of the parties will then admit of.

Power of sale and exchange to be inserted in settlement. (2) And in the said settlement to be made as aforesaid of the messuages and hereditaments so to be purchased as aforesaid shall be contained a power to enable the said (trustees) and the survivor of them his heirs and assigns at the request in writing of any person who shall be tenant for life or tenant in tail male or tenant in tail of the said estates to sell and exchange the same.

And powers for leasing, (3) And also the usual clauses and powers enabling each surviving tenant for life when in possession and for my said trustees during their respective minority to grant leases for twenty-one years under the proper restrictions.

jointuring, and portioning.

(4) And also powers for enabling the respective tenants for life when in possession to jointure not exceeding the sum of

<sup>(</sup>a) Sec ante p. 208, n. (a.)

pounds per annum for each jointure and so that there be not more than two jointures at the same time And also to charge the said estates with portions for younger children not exceeding the sum of pounds.

CLIX. PROVIBORS ANT DECLARATIONS

(5) And I hereby direct that in the said settlement there shall And all usual be inserted such limitations for preserving contingent remainders such provisions for cesser of the terms thereby created such contained in other powers of leasing such powers to grant liberty to work mines and collieries such provisions for the appointment of new trustees and for their indemnity and such other clauses powers provisoes agreements and declarations not inconsistent with the general scope and true intent and meaning of this my will as the said (trustees) or the survivor of them his heirs executors administrators and assigns or their or his counsel in the law shall think it advisable to insert for the advantage of the persons beneficially interested under the said settlement or for explaining the same or effectuating the general object and purpose thereof.

powers and clauses to be settlement.

CLX. TRUSTS OF RESIDUE.

## CLX.

#### TRUSTS OF RESIDUE.

Devise and bequest of residue of real and personal estate to trustees. (1) And as to all the rest and residue of my real and personal estates whatsoever and wheresoever (except such estates as may be vested in me upon trust or by way of mortgage) I give devise and bequeath the same unto the said (trustees) their heirs executors administrators and assigns according to the tenure and quality respectively Upon and for the trusts intents and purposes hereinafter mentioned (that is to say)

Devise of all residuary real estate to A B in fee.

(2) And as to all the rest and residue of my real estate whatsoever and wheresoever not hereinbefore devised [as well in reversion (a) as in possession and as well contingent as vested] with the appurtenances I give and devise the same unto A B of &c. his heirs and assigns for ever.

Devise of estates which shall lapse or become void. (b)

(3) And if any devise of lands tenements or hereditaments hereinbefore mentioned shall lapse by the death of the devise or devisees thereof in my lifetime or shall otherwise become void then I devise such lands tenements and hereditaments the

Practical direction. (a) These words, when consistent with the intention, should be inserted to obviate the doubt which occurred in Wheeler v. Waldrom, 3 P. W. 63 n. Doe dem. Wells v. Scott, 3 Mau. and Sel. 300, and other cases.

Lapsed estates.

(b) The devise of a residue of real estate only includes the property not before disposed of in the will; if it be intended, therefore, that the residuary devisee should take, and not the heir, the above expression should be used. See Wright v. Hall, Fortes. 182. Roe v. Fludd, Fortes. 184.

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devise whereof shall so lapse or become void unto AB his heirs and assigns for ever.

TRUSTS OF D BOTTLIB

(4) And as to all the rest and residue of the said trust monies Declaration of which shall remain after answering and satisfying the trusts and due. purposes hereinbefore declared of and concerning the same I hereby declare that the said (trustees) and the survivor of them his executors and administrators do and shall stand possessed thereof upon trust

(5) And as to all my goods chattels and other personal estate Bequest of rewhatsoever not hereinbefore specifically bequeathed I give and nal estate to bequeath the same to A B and C D their executors administra- trustees. tors and assigns upon the trusts intents and purposes hereinafter mentioned (that is to sav)

(6) And as to all the residue (a) of my personal estate I give Bequest of reand bequeath the same unto A B and his assigns for his and their nal estate. absolute use and benefit.

(7) And do and shall apply and dispose of the residue of the Trusts of the said trust monies {stock funds and securities} as follows (that is to say)

(8) And do and shall pay assign and make over the residue Pay over resiof the said monies estate and effects unto my dear wife her executors administrators and assigns for her and their own absolute use and benefit.

(9) And I hereby direct that if no person shall under the If no person trusts hereinbefore declared become entitled to the said trust entitled, monies and the stocks funds and securities upon which the same trust monies to sink into reshall be invested and the accumulations thereof the same shall sidne. sink into and form a part of the residue of my personal estate.

<sup>(</sup>a) The word "residue" will include all the personal estate "Residue." of which the testator dies possessed, and therefore all that has lapsed or become void since the date of the will. See Jackson v. Kelly, 2 Ves. 285, Brown v. Higgs, 4 Ves. 708.

CLXI.
TRUSTS OF

## CLXI.

Devise and bequest of trust and mortgage estates, (a)

And I give devise and bequeath to the said (trustees) their heirs executors administrators and assigns all the estates which at the time of my decease shall be vested in me upon any trusts or by way of mortgage with their rights members and appurtenances to hold the said estates unto the said (trustees) their heirs executors administrators and assigns according to the nature and quality thereof respectively upon trust to dispose of the said trust estates in the manner in which they ought to be held or disposed of pursuant to the said trusts and upon payment of the money secured on mortgage to convey or assign the estates in mortgage to the person or persons entitled thereto for the time being [But the money secured by or upon any such mortgages shall be considered and taken as part of my personal estate.]

Practical direction.

<sup>(</sup>a) It is always prudent to insert this clause; as notwithstanding the case of Lord Braybroke v. Inskip, 8 Ves. 417, it is still open to doubt whether trust or mortgage estates pass under a general devise of lands.

CLXII. TRUSTS OF OPETATE

### CLXII.

And I do hereby declare that the receipt or receipts of the said Declaration (trustees) or the survivor of them or the executors or administra- receipts shall tors of such survivor for any sum or sums of money payable to discharges.(a) them or him under or by virtue of the trusts of this my will shall be a sufficient and effectual discharge or sufficient or effectual discharges for the same [respectively] or so much thereof [respectively] as in such receipt or receipts thereof [respectively] shall be expressed or acknowledged to be received. And that the persons or person to whom the same shall be given his her or their executors or administrators shall not afterwards be answerable or accountable for any losses misapplication or non-application or be obliged or concerned to see to the application of the money therein mentioned and acknowledged to be received or any part thereof (b) And that no person purchasing or advancing money on a mortgage of the said hereditaments and premises (c) or any part thereof shall be bound or obliged to ascertain or inquire into the necessity propriety or expediency of any such sale or mortgage.]

be sufficient

rection.

Term.

<sup>(</sup>a) Instead of inserting several special clauses of this nature Trustees' refor the particular purposes of the will, this general clause, which ceipt clause. should be placed immediately before the usual trustee clauses, will be sufficient for all ordinary purposes. There are very few wills in which trustees are appointed in which it will not be found serviceable, and, as a general rule, it should be always inserted.

<sup>(</sup>b) This part of the clause must be inserted or not according Practical dito the circumstances.

<sup>(</sup>c) If there is a term created, say,

<sup>&</sup>quot;premises comprised in the said term of years."

CLXIII.
APPOINTMENT
OF EXECUTORS
AND
GUARDIANS.

# CLXIII.

#### APPOINTMENT OF EXECUTORS AND GUARDIANS.

Appointment of executors.

(1) And I appoint the said A B and C D executors of this my will (for legacy to executors see ante 168, (15a.)

Appointment of wife, and after her decease. (2) I appoint my said wife during her life [and until she shall marry again] and after her decease [or marriage]

of A B and C D guardians of children.

- (3) I appoint the said A B and C D and the survivor (b) of them
- (4) Guardians and guardian of the person and estates of my child and children during his her or their minority or respective minorities.

Executors.

(a) It is most usual to place the appointment of executors at the end of a will. It would seem, however, to be more consistent with a good arrangement to name them at the beginning.

Survivor.

(b) The office of guardian would go to the survivor although not named, Eyre v. Countess of Shaftesbury, 2 P. Wms. 103.

CLXIV. RYRCIPTION AND ATTROTA. TION.

# CLXIV.

## EXECUTION AND ATTESTATION.

(1) In witness whereof I the said A B the testator have to Signature. this my last will and testament [and to a duplicate of the same respectively | contained in this [and the preceding | sheets of paper set my hand [and seal(a)] (that is to say) my hand to sheets and my hand [and seal] to this last each(b) of the said sheet  $\lceil \text{and}(c) \text{ my seal at the top of the said sheets where they}$ are fixed together] this day of in the year of our Lord one thousand eight hundred and

A B (d) (testator's signature).

(2) In witness whereof I the said A B the testator this Signature to this my last will and testament contained in form.) day of this and the preceding sheets of paper have set my hand.

Sealing.

(a) Sealing is not a necessary to any will.

(b) This is the usual form, but it would seem that one signa- Signature. ture would be sufficient. See Winsor v. Pratt, 2 B. & B. 650.

(c) The sheets need not be joined together, I Show. 69. Comb. 174.

<sup>(</sup>d) If it can be clearly proved that a will of personal estate is according to the intentions of the testator, it need not be signed, Ross v. Ewer, 3 Atk. 162; nor is signature essential to a will of copyholds.

CLXIV. EXECUTION AND ATTESTA-

Attestation.

(3) Signed [and sealed] published (a) and declared by the above-named AB (the testator) as and for his last will and testament in the presence (b) of us who have at his request hereunto subscribed our names as witnesses in his presence (b) and in the presence (c) of each other. (d)

C D (e).

ΕF

(witnesses signature.)

GH.

Publication.

(a) Publication was formerly thought to be an essential part of a will. Ross v. Ewer, 3 Atk. 161; but this opinion seems now to be exploded. See ante p. 160 n. (a)

Signature in the presence of three witnesses. (b) It is very usual for the testator to sign the will in the presence of the witnesses; but it is not essential to the validity of the will that he should do so, if there be an acknowledgment by him to the witnesses that the signature is in his handwriting. Grayson v. Atkinson, 2 Ves. sen. 454; but the witnesses must sign in his presence. See Shires v. Glasscock, 2 Salk. 688.

Witnesses.

(c) It is not essential to the validity of the will that the witnesses should sign it in the presence of each other. Ellis v. Smith, 1 Ves. J. 11. Westbeech v. Kennedy, 1 Ves. & Bea. 362. Addy v. Grix, 8 Ves. 504.

Necessary formalities. (d) If all the necessary formalities do not appear recorded on the face of the will, evidence will be let in to prove that they were really complied with. See Lord Radcliffe v. Lady Parkyns, 6 Dow. 202. And see Hands v. James, Com. Rep. 531. Willes 1. Croft v. Pawlet, 2 Stra. 1109.

Witnesses.

(e) Wills of all real estate, except copyholds, require three witnesses, by the Stat. of Frauds, 29 Car. II. c. 3. s. 5. Wills of personal estate, and of copyholds, are valid without any witnesses; but it is always the safer and more prudent plan for the testator to have his will witnessed with the usual formalities whatever be the property to be affected by it. It may also be noticed here that an appointment of a guardian to the testator's children by will requires two witnesses, 12 Cha. II. c. 24. s. 8. Reddall v. Leddiard, 3 Phillim, 256.

The attestation of a marksman is sufficient. Harrison v. Harrison, 8 Ves. 185.

CLXV. CODICUS.

# CLXV.

#### CODICILS.

(1) This is a codicil to the last will and testament of me A B of &c. which will bear dates the day of Whereas I Recital that have in and by my said will appointed A B of and CD of to be trustees thereof and have devised and bequeathed queathed proto them their heirs executors administrators and assigns such trustees, part of my real and personal estate as therein is mentioned upon the trusts therein declared concerning the same and I have by and that he my said will given unto each of them the said A B and C D the each of them a pounds as a token of my respect and as an acknowledgment for the trouble they may have in the execution of the trusts of my said will And whereas the said AB de- Death of one Now I do by Revocation of parted this life on or about the day of this my codicil revoke and make void the said appointment devise, bedevise bequest and gift in my said will contained as aforesaid legacy, And I do hereby nominate and appoint X Y of to be the trustees of my said will in the place and stead of the trustees, said A B and C D and I do hereby devise and bequeath unto and devise and the said X Y and Y Z their executors administrators and assigns pequest or property to the said real and personal estate which in and by my said will is them upon the devised and bequeathed to the said A B and C D their executors will. administrators and assigns as aforesaid to have hold receive and take the same unto the said X Y and Y Z their executors administrators and assigns for the same term and interest and upon the same trusts and with under and subject to the same powers provisoes and declarations for upon with under and subject to which the same real and personal estate is so devised and bequeathed by

testator has in his will beperty to two

has given

and Y Z and appointment of new trusts of the

CLXV.

my said will as aforesaid And I direct that the said X Y and Y Z shall have the same powers and authorities as the said A B and C D so named in my said will.

Legacy to new trustees.

- (2) And I do hereby give unto the said X Y and Y Z the sum of pounds each as a token of my respect and an acknowledgment for the trouble they may have in the execution of the trusts of my said will or of my said codicil And I do hereby ratify and confirm my said will in all respects in which the same is not hereby altered and revoked.
- Signatures (a) (3) In witness whereof I have this day of to this codicil to my will set my hand [and seal].

AB.

Attestation.(a) (4) Signed and sealed by the above-named A B and by him published and declared as and for a codicil to his will in the presence of us who have hereunto in his presence and in the presence of each other subscribed our names as witnesses.

[witnesses.]

Codicil.

<sup>(</sup>a) A codicil must be made, executed, and aftested with the same formalities as are required for a will of the property to be affected by it. See Acherley v. Vernon, 9 Mod. 68. And see the notes, ante p. 358.

·CLXVI. CODICUS.

# CLXVI.

to the last will and ledoment

This is a codicil of me A B of &c. which will bears date the codicil devising lands day of Whereas since the execution of my said will contracted for I have contracted with X Y of &c. for the purchase of a mesof the will. suage or tenement and hereditaments in the parish of the county of for the sum of pounds Now I do by this my codicil give and devise the said messuage and tenement and hereditaments so contracted for by me as aforesaid unto my second son Thomas his heirs and assigns for ever And I do hereby ratify and confirm my said will in all respects in which the same is not hereby altered and revoked (signature and execution as in CLXV. 4).

CLXVII.

# CLXVII.

Noncupative wills.

A B of &c. did on the day of at in the county of in the presence of us whose names are hereunder written declare his will to be as follows (that is to say) (b) he gave the sum of pounds to C D and he gave all the interest of his personal estate to X Y &c. And he appointed O O and W W executors of his will Witness our hands this day of

A B

 $\mathbf{C} \mathbf{D}$ 

[witnesses.]

EF.

Noncupative wills.

(b) The very words should if possible be mentioned.

<sup>(</sup>a) The requisites of noncupative wills are prescribed in the 29 Car. II. c. 8. From the extended knowledge of writing and other causes, they are now almost entirely out of use.

CLXVIII. ENTIRE FORM. CHIERTY OF REAL ESTATE.

### CLXVIII.

# ENTIRE FORM, CHIEFLY OF REAL ESTATE.

This is the last will and testament of me AB of I do hereby revoke all former wills and codicils made by me Revocation of . And if my personal estate shall be insufficient for the payment of my debts and legacies then I declare my will to be that it shall be tate insuffilawful for A B of &c. and C D of &c. and the survivor of them and the executors administrators and assigns of such survivor to raise ciency by sale sufficient to pay the same by sale or mortgage of a competent part of my real estates hereinafter devised I give and bequeath my Bequest of leasehold house or tenement situate at in the county of with the appurtenances unto the said (trustees) their executors tees upon trust administrators and assigns for and during all the estate and in- to occupy the terest which I shall have therein at the time of my decease widowhood. Upon trust that they the said (trustees) and the survivor of them his executors administrators and assigns do and shall permit my wife Mary B to occupy and enjoy the same during her widowhood she paying observing and performing the rent covenants and agreements respectively reserved and contained in the lease of the said house or tenement and after her decease or marriage the and after her said house or tenement with the appurtenances shall form part of the residue of my personal estate and effects I give and house to form bequeath unto each of them the said (trustees) the trustees and sonal estate. pounds as an acknow- Bequest to exexecutors of this my will the sum of ledgment for the trouble they may have in the execution of the I give and bequeath unto my servant Legacies to trusts of this my will pounds as a slight reward for his faith- servants. AB the sum of

former wills. If personal escient, power to raise defior mortgage.

leasehold house to trusto permit wife

decease or marriage,

CLXVIII. ENTER PORM. CHIRFLY OF REAL ESTATE.

Bequest of pounds for mourning. Bequest of various other legacies.

· Direction that a legacy shall be vested on decease of testator.

General devise of real estate to uses.

To the use of trustees for a term upon certain trusts.

wife shall receive an annuity in bar of dower and iointure.

ful conduct in my service I give and bequeath the sum of pounds to every of the servants who shall be living with me at the time of my decease over and above the wages which may then be due to them respectively I give and bequeath unto all my children and grandchildren living at the time of my decease the sum of pounds each for mourning bequeath to the following persons the sums hereinafter named (that is to say) to A B of &c. the sum of pounds of lawful money of Great Britain and Ireland to XY of &c. the sum of pounds of like lawful money to Mary the wife of TL of &c. the sum of pounds of like lawful money And I direct

that the said legacy of pounds hereinbefore given to the said A B shall become an interest vested in the said A B immediately upon my decease but I direct that the payment thereof shall be postponed till he shall attain the age of years I give and devise all those my messuages lands and hereditaments situate at in the county of my freehold and copyhold messuages lands and hereditaments whatsoever and wheresoever with their and every of their appurtenances To and for the uses intents and purposes and subject to the powers provisoes and declarations hereinafter declared To the use of A B and concerning the same (that is to say) C D their executors administrators and assigns for and during the term of five hundred years to be computed from the day of

my decease and thenceforth next ensuing and to be fully complete and ended without impeachment of waste But neverthe-To the use that less upon the trusts and subject to the provisoes hereinafter declared and contained concerning the same and subject therew To the use and intent that my said wife (in case she shall survive me) and her assigns may yearly receive and take during her life so long as she shall continue my widow an annual sum or pounds of lawful money of Great yearly rent-charge of Britain and Ireland clear of all deductions whatsoever and to be issuing out of the said messuages and hereditaments hereinbefore devised and to be paid by four equal quarterly payments (that is to say) on the twenty-fifth day of March the twenty-fourth day of June the twenty-ninth day of September and the twenty-fifth day of December in every year the first

quarterly payment thereof to be made on such of the said days as shall first happen after my decease and I direct that such annual sum or yearly rent-charge shall be in full of the jointure of my said wife and in bar of all her dower and thirds And I hereby give to my said wife and her assigns such powers of entry and distress and sale upon the said messuages and hereditaments for recovering the said annual sum or yearly rentpounds if the same or any part thereof shall be charge of in arrear for the space of twenty-one days next after any of the said quarterly days of payment as are usually given to landlords for recovering rents reserved by lease or on common demise And (subject thereto) To the use of my eldest son William and To eldest son his assigns during his life without impeachment of waste And after the decease of my said son William To the use of the and after his first and every other son of my said son William severally and successively and one after another according to his respective. male. seniority and priority of birth in tail male And in default of To the use of my second son Thomas and his To second son assigns during his life without impeachment of waste and after the decease of my said son Thomas To the use of the first and To his sons in every other son of my said son Thomas severally and successively tail male. and one after another according to his respective seniority and priority of birth in tail male And in default of such issue To the use of my third and every other subsequently born son To third and and his assigns severally and successively and one after another other sons for life. according to his respective seniority and priority of birth during his life without impeachment of waste and after his respective decease To the use of his respective first and every other son To their sons severally and successively one after another according to his re- in tail male. spective seniority and priority of birth in tail male And so that the respective son or sons of the elder of my said subsequently born sons and his or their issue male shall always take before and be preferred to the respective son or sons of the younger of my said subsequently born sons and his or their issue male And in default of such issue To the use of all and every my daughters to To daughters be divided equally between or among them as tenants in common as tenants in

all my said daughters shall die without issue save one or if there

CLXVIII. ENTIRE PORM. CHIEFLY OF REAL ESTATE.

With power of

decease, to his sons in tail

commonin tail. in tail with cross remainders between or among them in tail and if

CLX VIII. ENTERS PORM. CHIRPLY OF REAL BUTATE.

To sons of sons in tail general.

To the use of testator's heirs. General devise to trustees to preserve the contingent remainders.

Accumulation clause.

Trustees to apply sums for maintenance.

residue,

shall be but one daughter to the use of that one or only daughter in tail And in default of such issue To the use of the first and every other son of every son of my body now born or hereafter to be born severally and successively one after another according to his respective seniority and priority of birth in tail but so that the respective son or sons of the elder of such sons of my body and such his or their respective issue as aforemid shall always take before and be preferred to the respective son or sons of the younger of such sons of my body and such his or their respective issue as aforesaid And for default of such issue To the use of my own right heirs for ever And to preserve the contingent remainders hereinbefore devised from being detroved I devise the hereditaments hereinbefore devised to any person during the term of his life with their appurtenances after the determination of that estate by forfeiture or otherwise in his respective lifetime unto and to the use of the said (trustees) and their heirs during the life of the tenants for life whose estate shall so determine In trust for him and by the usual ways to preserve the contingent remainders expectant or depending thereupon And I do hereby direct that if any person for the time being entitled under this my will to the actual possession or to the receipt of the rents and profits of the said messuages and hereditaments hereinbefore devised or any part thereof shall be under the age of twenty-one years and unmarried the said (trustees) and the survivor of them and the executors or administrators of such survivor shall so long as the person entitled as aforesaid shall be under the age of twenty-one years and unmarried (but subject and without prejudice to the powers hereinbefore contained and the uses and estates to be created thereby) receive and take the rents and profits of the said messuages and hereditaments or of the part thereof to which such person shall be entitled and apply a competent part thereof for his or her maintenance and education and invest the And lay out and invest the residue of the said rents and profits in the names or name of them the said (trustees) or the survivor of them or the executors or administrators of such survivor on government or real securities in England or Wales and alter and vary the same as occasion shall require so that the same may accumulate in the nature of compound interest

hereby direct that at the end of such period of accumulation or sooner if they the said (trustees) or the survivor of them or the executors administrators and assigns of such survivor think proper they or he shall call in and convert the said accumulated fund into money and apply the same in satisfaction and discharge of on the estate. the principal sums of money which shall then affect the hereditaments from the rents of which such accumulations shall have been produced either affecting the said premises at the time of my decease or by virtue of any charge made or to be made thereon by this my will or in pursuance of any of the powers contained in this my will And shall lay out and invest the And invest the residue of the said money (if any) in the purchase of freehold chase of lands or copyhold estates to be situated in England or Wales and shall to be settled settle the estates so to be purchased to the uses and in the the will; manner in which I have by this my will devised the hereditaments from the rents and profits of which such accumulations shall have proceeded or as near thereto as the deaths of parties and other circumstances will then admit of But if any such investment shall be made during the continuance of the period of accumulation the rents and profits of the estates so to be purchased shall to the end of the period of accumulation be accumulated in the manner and for the purposes hereinbefore mentioned And do and shall stand and be possessed of the said and stand posaccumulations and the stocks funds and securities upon which the same shall be invested and the interest and dividends thereof upon trusts upon and for such trusts intents and purposes as regard being had to the difference in the nature and quality of the respective estates will best or nearest correspond with the uses trusts intents and purposes hereinbefore expressed of and concerning the said messuages and hereditaments or as near thereto as circumstances will then admit of And I do hereby declare that the Declaration of said messuages and hereditaments are hereinbefore devised to trusts of term. the use of the said (trustees) their executors administrators and assigns for the term of five hundred years as aforesaid upon the trusts intents and purposes hereinafter expressed and declared of and concerning the same (that is to say) Upon trust that To secure an if the said annual sum or yearly rent-charge shall be in arrear annuity to

CLX VIII. ENTER PORM. CHIRPLY OF REAL PRIATE.

sums charged

to the uses of

sessed of accumulations aforesaid.

CLXVIII.
ENTIRE FORM,
CHIEFLY OF
REAL ESTATE.

for the space of forty days next after any of the days hereinbefore appointed for the payment thereof then and so often as the same shall happen the said (trustees) and the survivor of them and the executors or administrators of such survivor do and shall out of the said rents and profits of the said messuages and hereditaments or by sale or mortgage of the said messuages and hereditaments or a competent part thereof for the whole or any part of the said term of five hundred years or by other other ways and means which they or he shall think proper levy and raise the said annual sum or yearly rent-charge or so much thereof as shall be so in arrear and all expenses which my said wife her executors administrators or assigns or the said (trustees) or the survivor of them or the executors administrators and assigns of such survivor shall sustain or be put unto by reason of the nonpayment thereof or otherwise in the execution of the said trusts (And subject thereto) Upon trust that they the said (trustees) and the survivor of them and the executors administrators and assigns of such survivor do and shall by sale or mortgage of the said messuages and hereditaments or any part thereof for the whole or any part of the said term of five hundred years or by such other ways and means as they the said (trustees) or the survivor of them and the executors administrators or assigns of such survivor shall think fit Levy and raise for the portion or portions of all and every the child and children (other than or besides the child who under this my will shall for the time being be entitled to the said messuages and hereditaments in remainder immediately expectant on the said term of five hundred years) the sum of pounds of lawful money of Great Britain and Ireland and apply the same in the manner hereinafter mentioned (that is to sav) If there shall be but one such child living at my decease the said sum of pounds to be for the portion of that one child and to be paid to such child being a son at his age of twenty-one years and being a daughter at her age of twenty-one years or on the day of her marriage under that age with the consent of her guardian or guardians for the time being which shall first happen And if there shall be two or

To raise portions for younger children.

more such children living at my decease then the said sum of pounds to be divided between or amongst them in equal shares the share and shares of such of them as shall be a son or sons to be an interest vested or interests vested in him or them respectively at his or their age or respective ages of twenty-one years and if a daughter or daughters at her or their respective ages of twenty-one years or on the day or respective days of marriage under that age with such consent as aforesaid in case and so often as any of my child or children being a younger son shall depart this life or being a son shall become an eldest or only son so entitled as aforesaid before the share hereby intended for him her or them respectively shall have become vested as aforesaid Then and in every such case as well the share hereby originally provided for the said child or children so dying or becoming an elder or only son as aforesaid as the share or shares which by virtue of this present provision shall have survived or accrued to him her or them shall go remain and be to the others or other of the said children and if more than one in equal shares as tenants in common or to the others and other of the said children in like manner as his her or their original share or shares Provided always And I do hereby declare that it shall Provision for be lawful for the said (trustees) or the survivor of them or the executors administrators and assigns of such survivor after my decease with and out of the rents and profits of the said messuages and hereditaments comprised in the said term of five hundred years to levy raise and apply for the maintenance and education of such of my children for whom a portion is or are hereinbefore intended to be provided as aforesaid in the meantime and until his her or their portion or respective portions shall become payable such yearly sum or sums of money as they or he shall think proper not exceeding in any one year for any one such child what the interest after the rate of five pounds for one hundred pounds on his her or their presumptive portion under the trusts of the said term of five hundred years would amount to Provided always and Provision for I do hereby declare that it shall be lawful for the said (trustees) the advancement of chiland the survivor of them and the executors administrators and dren. assigns of such survivor at any time or times after my decease

to raise and levy by the ways and means aforesaid or any of them

CLXVIII. ENTIRE FORM. CHIERLY OF REAL ESTATE.

And Provision for the survivorship and accruer of shares.

> the maintenance of chil-

CLXVIII. ENTIRE FORM, CHIEPLY OF REAL ESTATE.

Declaration that subject to the term remainder-man shall receive the rents.

Proviso for cesser of term.

Power to any tenant for life if twentyone, and to the trustees during minority of tenants for life and tenants in tail, to lease for twenty-one years.

and to apply for the advancement or preferment in the world or otherwise for the benefit of any of my sons (other than or besides the son for the time being entitled as aforesaid) any sum or sums of money not exceeding in the whole for any one of such sons the moiety or equal half part of his then presumptive portion under the trusts of the said term of five hundred years and the same shall be considered and taken as part of the said portion Provided always and I hereby declare that the said (trustee) and the survivor of them and the executors administrators and assigns of such survivor do and shall (subject to the trusts aforesaid) from time to time permit the rents and profits of the said messuages and hereditaments or so much of the said rents and profits as shall remain after answering the trusts aforesaid to be received by the person or persons who for the time being shall be entitled to the said messuages and hereditaments in remainder immediately expectant upon the determination of the said tem Provided always and I hereby declare that when all the trusts hereinbefore declared of the said term of five hundred years shall have been performed or satisfied or become unnecessary or incapable of taking effect and all the costs and charges incurred by the said (trustees) and each and every of them their executors administrators and assigns in the execution of the said trusts shall have been paid (and which costs I do hereby authorize and empower them and him to raise by all or any of the means aforesaid and to retain) then the said term of five hundred years of and in the said messuages and hereditaments therein comprised or so much thereof as shall not have been sold or mortgaged for the purposes aforesaid shall cease determine and he void Provided always and I do hereby further declare that it shall be lawful for every person who by virtue of this my will shall be tenant for life or in tail in possession of the said messuages and hereditaments hereinbefore devised or be entitled to the rents and profits thereof and who shall have attained his or her age of twenty-one years and for the said (trustees) and the survivor of them and the executors or administrators of such survivor during the minority or respective minorities of any such tenant By any indenture or indentures either referring or not referring to this present power to be sealed and delivered by

him her or them respectively in the presence of and attested by two or more credible witnesses to limit or appoint by way of demise or lease all or any part or parts of the said messuages and hereditaments hereinbefore devised with their rights members and appurtenances to any person or persons for any term or terms of years not exceeding twenty-one years to take effect in possession and not in reversion or by way of future interest so as there shall be reserved in every such limitation or appointment by way of demise or lease the best or most approved yearly rent or rents to be incident to the immediate reversion of the hereditaments so to be limited or appointed that can be reasonably had or gotten for the same without taking any fine or premium or foregift or any thing in the nature thereof And so that the lessee therein named do thereby covenant for the due payment of the rent or rents thereby reserved And so that there be contained in every such limitation or appointment a clause in the nature of a condition of re-entry for nonpayment of the rent thereby reserved by the space of twenty-one days next after the same shall become due And so that the lessee therein named do execute a counterpart thereof. And be not by any clause or words exempted from punishment for committing waste any thing hereinbefore contained to the contrary thereof Provided also that it shall be lawful for Power to my notwithstanding my said son and every other male person who shall be te-son nant for life of the said messuages and hereditaments under the limitations hereinbefore mentioned By any deed or instrument in writing sealed and delivered by him respectively in the presence of and attested by two or more credible witnesses or by his last will and testament in writing or by any codicil thereto signed and published by him respectively in the presence of and attested by three or more credible witnesses (but subject to the uses and estates antecedent to the use of the person for the time being making such charge and the powers annexed to such antecedent uses and estates and also subject to the uses or estates to be limited in exercise of the said powers) To charge the said messuages and hereditaments or any part To charge prethereof with the payment of any annual sum not exceeding jointure, with pounds but clear of all deductions whatsoever to any usual powers for securing it.

CLYVIII CHIRPLY OF BRAL ESTATE.

CLXVIII. ENTIRE PORM. CHIRPLY OF REAL ESTATE.

And appoint premises for a term of years for further securing jointure.

portions for younger children.

sum of pounds, if two the sum of pounds, and if three or more, the sum of pounds,

woman whom he shall marry for her natural life for the jointure of such woman to be payable yearly or half-yearly with usual powers of distress and entry and detention of possession and perception of rents and profits And also (but subject as aforesaid) to limit and appoint the said messuages and hereditaments so to be charged as aforesaid to any person or persons for any term or terms of years Upon the usual trusts for securing the payment of the annual sum to be charged so that every such term of years be made to cease on payment of the annual sum thereby respectively secured and all expenses to be incurred by the To charge with nonpayment thereof respectively And also (but subject as afore said) to charge the said messuages and hereditaments or any part thereof with any sum of money for the portion or portions of any child or children of his body (other than or besides an eldest or only son for the time being entitled to the said messuages and hereditaments for an estate in tail male in possession or in remainder immediately expectant on the decease of his parent exercising this present power) not exceeding in the If but one the whole the sums hereinafter mentioned (that is to say) If but one such child the sum of pounds if two such children and no more then the sum of pounds and if three or more such pounds and with interest for the children then the sum of same respectively at any rate not exceeding five pounds for the one hundred pounds by the year the said sums of

pounds as the case shall happen to be pounds and vested in and payable to such child or children respectively at such age or respective ages days or times and if more than one in such shares and portions or to one or more exclusively of the other or others and with such conditions and limitations over for the benefit of any other or others of the said child or children respectively and in such manner as the said person for the time being exercising the said power shall think proper and shall by any deed or deeds instrument or instruments in writing so sealed and delivered and attested as aforesaid or by his last will and testament in writing or any codicil thereto so signed and published and attested as aforesaid appoint And also (but subject as aforesaid) to appoint all the said messuages and hereditaments or any part thereof so to be charged as last hereinbefore is men-

and secure the same by a term of years.

tioned to any person or persons for any term or terms of years without impeachment of waste Upon trust to raise the monies so to be charged by sale or mortgage or by or out of the rents and profits of the same hereditaments in the meantime and until such sale or mortgage shall be made or by both the aforesaid means but so that the term or terms of years so to be appointed be made to cease or be made redeemable on full payment of the money so to be charged and the interest thereof and all costs and charges incident thereto by means of such sale or mortgage as aforesaid by the person or persons for the time being entitled to the freehold or inheritance of the premises so to be appointed or by any other means whatsoever Provided always and I do hereby declare that the said messuages and heredi- premises shall taments hereinbefore devised shall not by virtue of the afore- to the paysaid powers of jointuring and charging with portions be liable to the payment of more than the principal sum of for jointures and more than the principal sum of for portions at any one time And therefore if by virtue or in exercise of any of the aforesaid powers the said hereditaments or any part thereof shall be charged with a greater annual sum for jointures than pounds or with a greater sum for the portions of younger children than pounds and the interest thereof then the payment of the sums respectively occasioning such excess or such part thereof respectively as shall occasion the excess shall during the time of such excess be suspended But I hereby declare that if any tenant or tenants for Proviso that life under the limitations hereinbefore declared shall at any time no jointure or times hereafter before they respectively shall be in the actual fect until perpossession or entitled to the actual receipt of the rents and pro- son making it shall come into fits of the messuages and hereditaments hereby devised shall in possession. exercise of the power hereinbefore enabling them respectively in that behalf limit or appoint to any woman or women whom he or they may marry any annual sum or annual sums by way of jointure

as aforesaid Then and in every such case the said annual sum or annual sums shall not take effect upon or charge the said hereditaments or be payable unless and until the person or persons so limiting or appointing the same respectively as aforesaid shall become or if living would have become under the limitations

CLXVIII. ENTIGE PORM. CHIRPLY OF REAL ESTATE.

Proviso that only be liable ment of nounds for pounds jointures and pounds for portions.

shall take ef-

hereinbefore declared entitled to the actual receipt of the rents

and profits of the same hereditaments any thing hereinbefore

contained to the contrary notwithstanding And I do hereby

CLXVIII. ENTIRE FORM, CHIEFLY OF REAL ESTATE

Proviso that no charge of portions shall take effect until person making it shall come into possession. declare that if any tenant or tenants for life under the limitations hereinbefore declared shall at any time or times hereafter before they respectively shall be in the actual possession or entitled to the actual receipt of the rents and profits of the said messuages and hereditaments hereby devised in exercise of the power hereinbefore enabling them respectively in that behalf subject and charge the said messuages and hereditaments or any of them or any part thereof to and with the payment of any sum of money for a portion or portions Then and in every such case the said sum or sums of money shall not be a lien or charge upon the said hereditaments or become vested in or payable to any person or persons whomsoever unless and until the person or persons so charging the same hereditaments as aforesaid or some one or more of his or their issue respectively shall under the limitations hereinbefore declared become entitled to the actual possession or to the receipt of the rents and profits of the same hereditaments any thing hereinbefore contained to the contrary thereof notwithstanding as to all the residue of my personal estate I give and bequeath the same unto AB and his assigns for his and their absolute use and benefit And I give devise and bequeath to the said (trustees) their heirs executors administrators and assigns all the estates which at the time of my decease shall be vested in me

Bequest of residue of personal estate.

Devise and bequest of trust and mortgage estates.

bers and appointments to hold the said estates unto the said (trustees) their heirs executors administrators and assigns according to the nature and quality thereof respectively upon trust to dispose of the said trust estates in the manner in which they ought to be held or disposed of pursuant to the said trusts and upon payment of the money secured on mortgage to convey or assign the estates in mortgage to the person or persons entitled thereto for the time being But the money secured by or upon any such mortgages shall be considered and taken as part of my personal estates Provided always and I hereby declare that if the trustees appointed in this my will or to be appointed under the present

upon any trusts or by way of mortgage with their rights mem-

Power to change trustees. Ī

CLXVIII. ENTIRE FORM. CHIEFLY OF DEAL PETATE

provision or any of them or their or any of their heirs executors administrators and assigns shall die or be desirous of being discharged from or refuse or decline or be incapable to act in the trusts hereby in them respectively reposed as aforesaid before the same shall be fully executed then and in every such case it shall and may be lawful to and for my said wife during her life and after her decease to and for the said trustees or the surviving or continuing trustee appointed in this my will whether they or he shall accept the trusts thereof or shall renounce the same or for the trustees or the surviving and continuing trustee to be appointed under this present provision or the executors or administrators of such last surviving or continuing trustee by any deed or deeds instrument or instruments in writing to be by them him or her sealed and delivered in the presence of and attested by two or more credible witnesses from time to time to nominate and appoint any fit person or persons to be a trustee or trustees in the stead or place of the trustee or trustees so dying or desiring to be discharged or becoming unwilling or incapable to act as aforesaid And when and so often The trust preas any new trustee shall be nominated and appointed as aforesaid all the trust estates monies and premises or such of them the new trusas shall then be subject to the trusts and provisions aforesaid like powers. which shall have vested in such trustees or trustee so dying desiring to be discharged or becoming unwilling or incapable to act as aforesaid shall be thereupon with all convenient speed conveyed assigned and transferred so and in such manner as that the same shall and may be legally and effectually vested in the person or persons so to be appointed as aforesaid either solely or jointly with the surviving or continuing trustees or trustee as occasion shall require To the uses and upon and for the trusts intents and purposes hereinbefore expressed and declared or such of them as shall be then subsisting undetermined and capable of taking effect and the person or persons so to be appointed as aforesaid shall have and be entitled to exercise the same powers and authorities as if he or they had been appointed a trustee or trustees of this my will Provided always And I do hereby further declare that the chargeable trustees of this my will hereby appointed and to be ap-only for the

monies they Teceive.

CLXVIII. ENTIRE FORM, CHIEFLY OF REAL ESTATE.

Direction that trustees shall only be responsible for their own acts.

And that trustees shall retain all costs.

Declaration that trustees' receipts shall be sufficient discharges.

Appointment of executors and of AB and C D guardians of children.

pointed as aforesaid and each and every of them and each and every of their heirs executors and administrators shall be charged and chargeable for such monies only as they respectively shall actually receive by virtue of the trusts hereby in them reposed notwithstanding their or any of their giving or joining in giving any receipt or receipts for the sake of conformity And I direct that none of them shall be answerable or accountable for any banker or broker with whom the said trust monies and premises shall be placed for safe custody or for any default or neglect of the others or other of them or for involuntary losses And also that it shall and may be lawful for them with and out of the monies which shall come to their respective hands by virtue of the trusts aforesaid to retain and reimburse themselves respectively and also to allow their respective co-trustees or co-trustee all costs charges damages expenses and fees to counsel for advice which they or any of them shall or may sustain expend or disburse in or about the execution of the aforesaid trusts or in And I do hereby declare that the receipt relation thereto or receipts of the said (trustees) or the survivor of them or the executors or administrators of such survivor for any sum or sums of money payble to them or him under or by virtue of the trusts of this my will shall be a sufficient and effectual discharge or sufficient or effectual discharges for the same respectively or so much thereof respectively as in such receipt or receipts thereof respectively shall be expressed or acknowledged to be received And that the persons or person to whom the same shall be given his her or their executors or administrators shall not afterwards be answerable or accountable for any losses misapplication or nonapplication or be obliged or concerned to see to the application of the money therein mentioned and acknowledged to be received or any part thereof And that no person purchasing or advancing money on a mortgage of the said hereditaments and premises or any part thereof shall be bound or obliged to ascertain or inquire into the necessity propriety or expediency of any such sale or mortgage And I appoint the said A B and C D executors of this my will And I appoint the said A B and CD and the survivor of them guardians and guardian of the person and estates of my child and children during his her

or their minority or respective minorities In witness whereof I the said AB the testator have to this my last will and testament contained in this and the preceding sheets of paper set my hand (that is to say) my hand to each of the said sheets and my hand to this last sheet and my seal at the top of the said sheets where they are fixed together this day of in the year of our Lord one thousand eight hundred and

AB (testator's signature).

CLXVIII. ENTIRE FORM, CHIEFLY OF REAL ESTATE.

Signature.

SIGNED published and declared by the above-named A B Attestation. (the testator) as and for his last will and testament in the presence of us who have at his request thereunto subscribed our names as witnesses in his presence and in the presence of each other

CD

E F (witnesses, signature.)

GH.

CLX1X, ENTIRE FORM, COMPRISING PERSONAL ESTATE.

### CLXIX.

#### ENTIRE FORM.

Appointment of executors.

General bequest of personal estate to trustees. Upon trust to convert personal estate into money.

Trust to invest monies.

and vary the

Direction that variation shall be with the consent of wife and after her decease at the discretion of trustees.

This is the last will and testament of me A B of &c. I hereby appoint AB of &c. and CD of &c. trustees and executors of this my will I hereby give and bequeath unto the said (trustees) their executors administrators and assigns all my personal estate whatever and of what nature or kind soever that they the said (executors) and the survivor of them and the executors administrators and assigns of such survivor do and shall as soon as conveniently may be after my decease sell and dispose of and convert into money so much thereof as shall not consist of money or securities for money and as shall be in its nature saleable and collect get in and receive the residue thereof and shall lay out and invest the said sum of pounds and the stocks funds and securities upon which the same shall be invested be in their or his names or name in the parliamentary stocks or public funds of Great Britain or at interest on government or real securities in England or Wales And from time to time to alter vary and transfer the hereinbefore mentioned trust monies so to be laid out and invested as aforesaid for or unto other stocks funds or securities of the like nature when and as often as they or he shall think fit And I do hereby direct that every such calling in sale alteration variation or transfer shall during the life of my said wife be made with her consent in writing and after her decease be made at the discretion and of the proper authority of the said (trustees) or the survivor of them or the executors administrators or assigns of such survivor And I do hereby declare that the said (trustees) and the survivor of them and the executors administrators and assigns of such survivor shall stand and be possessed of and interested in the said trust monies stocks funds and securities and the interest dividends and annual produce thereof upon and for the trusts intents and purposes and subject to the powers provisoes agreements and declarations hereinafter expressed and declared of and concerning the same (that is to say) Upon trust that they the said (trustees) and the sur- Upon trust to vivor of them and the executors administrators and assigns of such survivor do and shall as soon as conveniently may be after rally. my decease by with and out of the same pay and satisfy all the debts which I shall justly owe at the time of my decease and my funeral expenses and the costs and charges of proving and establishing this my will and the carrying the same into execution and the several legacies given by this my will or which I shall give by any codicil to this my will And (subject thereto) Upon Upon trust to trust that they the said (trustees) and the survivor of them and the executors administrators and assigns of such survivor do and shall during such time as my said wife shall continue unmarried with and out of the said interest and dividends of the said trust monies stocks and funds and securities levy and raise the annual sum of pounds of lawful money of Great Britain and Ireland and pay the same to my said wife or her assigns by two equal half-yearly payments on the day of

the first payment thereof to commence and be made at the expiration of three calendar months after my decease But if my said wife shall marry again after my decease then And if she do and shall after such marriage with and out of the interest smaller sum. and dividends levy and raise the sum of pounds and pay the same to my said wife or her assigns during the remainder of her life at or in the common dining-hall of Lincoln's Inn by two equal half-yearly payments on the day of and the

the first of such last mentioned payments to commence and be made at the expiration of six calendar months after such marriage And I do hereby declare that each of the said annual sums of pounds and pounds shall be paid without any deduction or abatement whatsoever (and subject thereto) The Trust for all said trust monies stocks funds and securities shall remain and

CLXIX. ENTIRE FORM. COMPRISING PRESONAL. BOTATE

Declaration of trusts of personalty,

pay debts and legacies gene-

sum to widow. durante vid.

CLXIX. ENTIRE PORM, COMPRISING PERSONAL ESTATE.

As to shares of sons absolutely. But if daughters are married, shares to be for their separate use.

Their, receipts to be sufficient discharges.

If no child shall be entitled, trust monies shall go to A B absolutely.

Provision for the survivorship and accruer of shares.

Provision for the mainte-

CLXIX. WILLS. be in trust for all and every my present and future born child and children and if more than one in equal shares as tenants in common And as to the shares of my son or sons In trust for such son or sons his and their executors administrators and assigns respectively for his and their absolute use and benefit But in respect to the share or shares of my daughter or daughters who shall at any time or times during their respective lives be under coverture. In trust to receive the interest and dividends thereof and pay the same into her or their hands for the sole and separate use of such daughter or daughters free from the debts or control of any husband or husbands with whom she or they may intermarry during such time or times as she or they shall be under coverture. And I hereby declare that the receipt or receipts of such daughter or daughters or of such person or persons as she or they shall appoint shall be a suffcient discharge or sufficient discharges for the interest dividends and annual produce which shall become due during her or their coverture or respective covertures in respect of her or their share or respective shares in the said trust monies stocks funds and

securities And I hereby direct that if none of my children shall under the trusts hereinbefore declared become entitled to or interested in the said trust monies and the stocks funds and securities upon which the same shall be invested and the accumulations thereof then after such failure of issue as aforesaid the same shall Remain and be in trust for AB his executors administrators and assigns for his and their absolute use and benefit And in case and so often as any of the children of the said AB who being a son or sons shall die under the age of twenty-one years or being a daughter or daughters shall die under that age without having been married with the consent in writing of her or their respective guardian Then and in every such case as well the share or shares hereby originally provided for the said child or children so dving or marrying as the share or shares which shall have survived or accrued to him her or them by virtue of this present provision shall go remain and be to the others or other of the said children and if more than one in equal shares as tenants in common And I do hereby further declare that after the decease or marriage of my said wife and

during such time as the said children or any of them being a son or sons shall be under the age of twenty-one years or being a daughter or daughters shall be under the said age and unmarried the said (trustees) or the survivor of them &c. shall appropriate all or a competent part of the interest and dividends of the share to which such child or children shall be for the time being entitled under the trusts and provisions hereinbefore declared and contained for or towards his her or their maintenance education or otherwise for his or her benefit And I do hereby Provision for further declare that it shall be lawful for the said (trustees) or the survivor of them &c. at any time or times during the life or widowhood of my said wife with her consent and after her decease or marriage at their or his discretion to raise and apply the whole or any part of the share or shares to which the said child or children shall for the time being be entitled under the trusts and provisions hereinbefore declared and contained for or towards his her or their preferment advancement or benefit Provided always and I do hereby further declare that until the Accumulation whole of the said trust monies stocks funds and securities shall become vested in such child or children the said (trustees) or the survivor of them &c. shall receive the interest and dividends of the said sum of pounds and the stocks funds and securities thereof or such part thereof as shall be unapplied and undisposed of under or by virtue of the trusts or provisions hereinbefore declared and lay out and invest the same in his or their names or name in any of the stocks funds and securities hereinbefore mentioned so that the same may accumulate in the way of compound interest and shall and may from time to time alter and vary the accumulations for the time being made into other stocks funds and securities of the like nature at their and his discretion and at the end of the period hereby limited for such accumulations the said (trustees) or the survivor of them &c. shall stand and be possessed of the said trust monies and the accumulations which shall have been made and the stocks funds and securities in which the same shall have been invested and the interest and dividends thereof Upon and for the same trusts intents and purposes and with under and subject to such and the same powers provisoes and declarations as are herein-

CLXIX. ENTIRE FORM. COMPRISING PERSONAL ESTATE.

nance and education of the children.

the advancement of the

CLXIX.
ENTIRE FORM,
COMPRISING
PERSONAL
ESTATE.

Proviso that if children shall not take, their shares shall go to their issue.

Power to change trustees.

before expressed and declared of and concerning the fund from which such accumulations shall have proceeded nevertheless and I do hereby direct that if any of my said children shall depart this life before he she or they shall attain the age of twenty-one years or being a daughter marry with such consent as aforesaid and leaving issue of his her or their body or bodies him or them surviving then and in every such case such issue shall respectively be entitled to the share or shares as well surviving and accruing as original to which the parent or respective parents of such issue would have been entitled of and in the trust monies stocks funds and securities if he she or they had attained the age of twenty-one years and if a daughter had married with such consent as aforesaid such share or shares to vest in such issue respectively as being a son or sons grandson or grandsons shall attain the age of twentyone years or being a daughter or daughters grand-daughter or grand-daughters shall attain that age or marry Provided always and I hereby declare that if the trustees appointed in this my will or to be appointed under this present provision or any of them or their or any of their heirs executors administrators and assigns shall die or be desirous of being discharged from or refuse or decline or be incapable to act in the trusts hereby in them respectively reposed as aforesaid before the same shall be fully executed then and in every such case it shall and may be lawful to and for my said wife during her life and after her decease to and for the said trustees or the surviving or continuing trustee appointed by this my will whether they or he shall accept the trusts thereof or shall renounce the same or for the trustees or the surviving and continuing trustee to be appointed under this present provision or the executors or administrators of such last surviving or continuing trustee by any deed or deeds instrument or instruments in writing to be by them him or her sealed and delivered in the presence of and attested by two or more credible witnesses from time to time to nominate and appoint any fit person or persons to be a trustee or trustees in the stead or place of the trustee or trustees so dying or desiring to be discharged or becoming unwilling or incapable to act as aforesaid And when and so often

as any new trustee shall be nominated and appointed as aforesaid all the trust estates monies and premises or such of them as shall then be subject to the trusts and provisions aforesaid which shall have vested in such trustees or trustee so dving desiring to be discharged or becoming unwilling or incapable to act as aforesaid shall be thereupon with all convenient speed conveyed assigned and transferred so and in such manner as that the same shall and may be legally and effectually vested in the person or persons so to be appointed as aforesaid either solely or jointly with the surviving or continuing trustees or trustee as occasion shall require To the uses and upon and for the trusts intents and purposes hereinbefore expressed and declared or such of them as shall be then subsisting undetermined and capable of taking effect and the person or persons so to be appointed as aforesaid shall have and be entitled to exercise the same powers and authorities as if he or they had been appointed a trustee or trustees of this my will Provided always and I do Trustees to be hereby further declare that the trustees of this my will hereby appointed and to be appointed as aforesaid and each and every of them and each and every of their heirs executors and administrators shall be charged and chargeable for such monies only as they respectively shall actually receive by virtue of the trusts hereby in them reposed notwithstanding their or any of their giving or joining in giving any receipt or receipts for the sake of conformity And I direct that none of them shall be answerable Direction that or accountable for any banker or broker with whom the said trust monies and premises shall be placed for safe custody or for any default or neglect of the others or other of them or for involuntary losses And also that it shall and may be lawful for them with and out of the monies which shall come to their respective hands by virtue of the trusts aforesaid to retain and reimburse themselves respectively and also to allow their respective co-trustees or co-trustee all costs charges damages and fees to counsel for advice which they or any of them shall or may sustain expend or disburse in or about the execution of the aforesaid trust or in relation thereto And I do hereby declare that the receipt or receipts of the said (trustees) or the survivor of them

or the executors or administrators of such survivor for any sum

CLXIX. ENTIRE FORM. COMPRIGENCE PRESONAT. RETATE

The trust premises to be conveyed to the new trustees with the like powers.

chargeable only for the monies they receive.

trustees shall only be responsible for their own acts.

And that trustees shall retain all costs.

Declaration that trustees' receipts shall CLXIX.
ENTIRE FORM,
COMPRISING
PERSONAL
ESTATE.

be sufficient

or sums of money payable to them or him under or by virtue of the trusts of this my will shall be a sufficient and effectual discharge or sufficient or effectual discharges for the same respectively or so much thereof respectively as in such receipt or receipts thereof respectively shall be expressed or acknowledged to be received. And that the person or persons to whom the same shall be given his her or their executors or administrators shall not afterwards be answerble or accountable for any losses misapplication or non-application or be obliged or concerned to see to the application of the money therein mentioned and acknowledged to be received or any part thereof. In withess whereof I have this day of to this my last will and testament set my hand

Signature.

Attestation.

SIGNED and sealed by the above-named A B and by him published and declared as and for his last will and testament in the presence of us who have hereunto in his presence and in the presence of each other subscribed our names as witnesses.

[witnesses.]

TO

# THE FORMS.

\*\* The references to the Notes not consisting of Forms, are printed in italics.

# Α.

```
ABATEMENT,
      in case of error in parcels, agreement for, in purchase money, 24
ABSTRACT,
      agreement to deliver, 7, 13
if, should not be delivered within a certain time, agreement to be void, 17
agreement to deliver, of one set of premises to C D on an exchange, 69
agreement to deliver, of the other set of premises, 70
ACCIDENTS.
      before completion of purchase not to annul agreement, 10
ACT OF PARLIAMENT,
       expenses of, to be borne by vendor, 9
      purchaser to pay expenses of inclosure, 20
      agreement to apply for, 98
      to contain all proper clauses, ib.
      parties not to obstruct the passing of, ib.
but quære as to the validity of such clause, ib.
every party to sustain an equal share of expenses of, 99
       A B to be solicitor for obtaining, ib.
ACCUMULATION,
      clause for (real estate,) 241
for (personal estate,) 253
       trustees to stand possessed of for, 242
       during the minority of an unborn person, void, ib.
       clause for, 255
       trust for, of profits of lands for twenty-one years, 265 of sum of money, 266
       upon trusts for benefit of children, 266, 267
    VOL. II.
                                                                                               CC
```

### ACCUMULATION—continued. term allowed for, 266 trust to invest profits of trade in order that they may accumulate. 311 ADMINISTRATION. expenses of, to be borne by purchaser, 22 ADVANCEMENT. provision for the, of children out of the rents, 238 out of personalty, 252 very short, 254 of single child, 256 of illegitimate child, 278 ADVOWSON. recital of seisin of, 97 that Y Y is the present incumbent, ib. agreement that on a vacancy AB will present such person to, as CD shall a point, ib. devise of, upon trust, 203 to present son when it shall become vacant, if qualified. ib. but if son shall not be qualified, ib. upon trust to present son-in-law, ib. preference to be given to particular son-in-law, ib. trust to present nominee of real owner, 204 provision that son and sons-in-law shall be appointed at any time, ib. trust to present a person to, under an honorary engagement to resign, ib. nature of the stipulation, ib. AGENT. recital of agreement to act as, for solicitor in the country, 138 for bond for, ib. condition that if obligor shall pay all monies which shall be due to, bond shall be void, ib. AGREEMENTS. commencement, date, and parties, 1 other forms, ib. 2 between husband and wife, and another, ib. A B by attorney, and C D ib. A B C D and surety, ib. three, ib. trustees and another, ib. mutual covenants by each party with the other, to perform the agreements to k performed by him, ib. for the sale and purchase of property that vendor has contracted for sale of premises ib. testatum, whereby in consideration of purchase money, vendor coverants " convey the premises on or before the day of ib. covenant by purchaser to pay purchase money, 4 description of parcels in, 4.—See PARCELS. vendor agrees to sell, 7 to deliver abstract, ib. expenses of abstracts and conveyance to be equally borne by vender and purchaser, ib. that necessary parties shall execute conveyance, 8 purchaser agrees to pay consideration money, ib. conveyance, &c. to be at purchaser's expence, and the conveyance to be #

proved by the counsel or solicitor of each party, 9

# AGREEMENTS-continued. and each to pay his own fee, ib. that the expenses of any fines or recoveries, assignment of terms not before assigned, shall be borne by vendor, ib. expenses of act of parliament, shall be borne by vendor, ib. agreement respecting arrears of rent, ib. purchaser to have possession on, &c, ib. vendor to pay rates, &c. to a given day, 10 buildings to be insured by vendor until completion of contract, ib. accidents before completion of purchase not to affect the agreement, ib. agreement by vendor to surrender copyholds, 10 and covenant for the title. 11 that on surrender, purchaser will pay purchase money, ib. the purchaser shall pay expenses of surrender, ib. and vendor of fine or recovery. ib. agreement to sell life estate, ib. that vendor shall convey an estate for life, 12 death of vendor or nominee shall not avoid contract, ib. agreement to sell leaseholds, ib. vendor to deliver abstract, 13 that vendor shall assign, ib. and will procure lessor's consent, ib. purchaser to pay rents and perform covenants, ib. to execute defeazance reviving condition, 14 recital that vendor carries on business, ib. testatum, that in consideration of purchase money, vendor covenauts to use every exertion to get his customers to employ purchaser, ib. and will not set up the same trade, ib. covenant by purchaser to pay purchase money by instalments and interest for the same, 15 timber to be valued by arbitrators, ib. and if they disagree, by umpire, 16 purchaser not to pay more than a stipulated sum, ib. provision on the failure of appointing arbitrators, ib. purchaser to pay value of timber, ib. and expenses of appraisement, 17 that purchaser shall take fixtures and furniture at a valuation ib. if abstract should not be delivered, and title deduced within a given time, agreement to be void, ib. declaration that time shall be the essence of the agreement, 18 if purchase money be not paid, purchaser to pay interest, ib. agreement that purchaser shall pay part of purchase money on the day of and secure the rest by a mortgage, 19 vendor to retain title deeds, and at his own expense covenant to produce and deliver purchaser attested copies thereof, 19 purchaser to have title deeds, and to covenant to produce them and give vendor copies thereof, 20 to be at the expense of discharging incumbrances, ib. to pay a share of the expenses of an inclosure act, ib. vendor not to produce remote title to certain piece of land, 21 that no evidence shall be required anterior to a certain will, ib. on evidence to be required of certain facts, where there are recitals thereof in deeds thirty years back, 22 expenses of administration to be borne by purchaser, ib.

```
AGREEMENTS—continued
         that the expenses of assigning a particular term, shall be borne by purcha-
         expenses of evidence of title to be borne by purchaser, ib.
         that all deeds relating to other property shall be retained by vendor. who
            shall covenant for their production, 23
          title of lands given in exchange not to be required, ib.
          no title to be required anterior to inclosure act, ib.
         vendor not to identify new with old description, further than as appears by
            abstract. ib.
          vendor not to be required to get in legal estate, ib.
          description of property to be taken as correct, and no abatement to be
            made, 24
          abatement to be made, ib.
          any disputes as to sale to be referred to arbitrators, ib.
          recital that title is defective. ib.
               that purchaser should enter into possession thereof, but that no convev-
                 ance should be taken, 25
               that certain deeds are missing, ib.
               transfer of part of purchase money into names of trustees, ib.
          declaration that they shall stand possessed thereof upon certain trusts, for
            the security of purchaser, ib.
          covenant by vendor to use every exertion to procure deeds, ib.
          that only a [28] years title can be made to a certain close, 26
          that purchaser should be indemnified, ib.
          declaration of trusts of part of purchase money, ib.
                     to keep the purchaser indemnified against all claims on account
                        of such defect for twenty years, ib.
                     and if purchaser shall sustain damage, to repay the same to
                        him, ib.
                     and subject to the trusts to pay interest to vendor, 27
                     and if no claim, &c. shall be made to transfer the same to ven-
                     but if loss shall be sustained, to indemnify him fully, ib.
                     proviso that if claim shall be prosecuted beyond twenty years,
                        indemnity to continue, 27
          covenant by vendor, that if purchaser is desirous of disposing of property,
            and if defect shall not have been remedied, vendor will purchase the
                                     pounds, 28.
             same at the sum of
          covenant by purchaser to convey the premises, ib.
          proviso that agreement shall not be construed to be a mortgage, ib.
          that if defect shall be remedied, agreement shall be void, 29
          clause whereby each of the parties binds himself in the sum of
             pounds, ib.
          stipulation, that on breach of covenant by one party, a sum to be paid by
             way of liquidated damages, 29
     for mortgages, 30
          recital of agreement for the loan of a sum of money, ib.
                 of deposit of title deeds, ib.
          agreement to execute mortgage, ib.
          that conveyance shall contain all usual covenants, 30
          power of sale to be inserted in conveyance, 31
```

as also clauses for insurance and repairing, ib.

recited contract for purchase, ib.

```
AGREEMENTS—continued.
         and agreement that part of the purchase money should be paid immedi-
            ately, which purchaser hath accordingly done, 31
         and that the residue thereof should be secured in the manner hereinaster
            mentioned. ib.
         testatum, whereby in consideration of sum already paid, and of sum to be
            paid, vendor agrees to stand possessed of premises subject to proviso, ib.
         provision that if purchaser shall pay residue of purchase money by three
            half yearly instalments and interest, vendor will make over the premises
            to purchaser, 32.
         covenant by vendor for title, 33
                  that the lease is good, ib.
                  good right to assign, 34
                  for quiet enjoyment, ib.
                  free from incumbrances, 34
                  and for further assurance, 35
         provision that it shall be lawful for purchaser to enter and enjoy the premises
            until default shall be made, ib.
          covenant by purchaser to pay the residue of the purchase money, 36
         and that if default shall be made in payment of residue, it shall be lawful
            for vendor to enter and to hold the premises, ib.
    for annuities
          agreement to grant annuity, 37
          to deliver abstract, ib.
         recital of agreement by grantee to pay consideration money, 38
         if grantor should die, agreement to be void, ib.
          that grantor shall covenant to insure his life, ib.
          and a covenant to insure premises, ib.
          and a proviso for repurchase, ib.
          costs of agreement to be paid by grantor, ib.
          expenses to be borne by grantor, 39
          to deliver title deeds, ib.
          covenant to pay annuity, 39
     for leases.
          that lessor contracted to build a house, 40
          and agreement for lessee to finish it, ib.
          agreement to let and take, 41
                     where lessor has only a term for years, ib. n.
                     to grant a lease, ib.
                     by husband and wife to grant, ib. n.
          covenant that when lessee shall have built a house, lessor will demise, ib.
                    where lessor has only a term, ib. n.
                    that when certain works shall be finished, lessor will grant a lease, 42
                    where lessor has only a term, ib. n.
          for years, months, or weeks, ib.
          rent to be payable quarterly in advance, ib.
          to be payable monthly or weekly, 43
          peppercorn rent, 43. n.
          lessee to hold the same for years at a certain rent, ib.
           to hold the same paying the rent of, ib.
           to hold a farm, ib.
          that lessee may hold until notice to quit, 44
          lessee to leave premises in good condition, ib.
          to replace crockery, &c. ib.
          lessor to pay taxes, &c. ib.
```

```
AGREEMENTS-continued.
          and keep premises in repair, 45
          replace furniture. ib.
          that in indenture of lease shall be contained covenants by the lessee, ib.
                  to pay rent, ib.
                  and taxes, ib.
                  to repair. ib.
                  to paint outside once in three years, ib.
                  for painting inside, &c. once in seven years, 46.
                  pay share of expenses of drain, ib.
                   and not to suffer fixtures to be removed. ib.
                  not to assign without license, ib.
                  a condition giving re-entry on bankruptcy or insolvency of lesse, if
                   covenant to permit lessor to enter upon premises and make schedule
                     of fixtures. ib.
                   not to carry on trade of any kind, ib.
                   not to carry on particular trades, ib.
                   proviso for suspension of rent in case of fire, ib.
                               insurance, 48
                   lessor to enter and give notice to repair, ib.
                  proviso for re-entry on the premises on nonpayment of rent, it. that the term shall be determinable at seven or fourteen year, it.
           covenant by lessee to accept lease, 49
           and pay costs of the agreement and of the lease, and employ person the
             lessee chooses, ib.
           that if the house shall be destroyed before the execution of agreement, it
             shall still be binding, ib.
           lessor not to be required to shew his title, ib.
                 to produce title, ib.
           that lessor shall only be obliged to produce lease to himself, 50
           and indemnify lessee from loss by reason of covenants in lease, ib.
           that lessor shall covenant to produce deeds, ib.
           covenant by lessor to endeavour to procure renewal, ib.
           that lessee will not expose goods outside premises, ib.
                       will paint premises of a certain colour, 51
                       and not to remove doors, &c. ib.
                       repair chancel and indemnify vendor therefrom, ib.
           power of distress on lands of lessee, ib.
           covenant by lessor that he will build a house or houses according to a spec-
             fication, 52
                     where there is a surety, 52. n.
           to expend
                             pounds therein, ib.
           that bricks shall not be made or gravel dug, 53
           that lessee will employ lessee's surveyor, ib.
           pay architects per-centage, ib.
           pay a proportion of expenses for cutting drains, ib.
           power for lessee to erect a mews, ib.
           paper rooms on three floors, ib.
           and shall set up dresser, 54
           and complete premises, ib.
           when buildings finished, lessee to have separate leases of every house, it
           and that leases shall contain covenants, ib.
           by lessee to complete house, ib.
           to repair, 55
```

```
AGREEMENTS-continued.
         expend a certain sum, 55
         covenants by the lessor, ib.
         for quiet enjoyment of lessee, ib.
          to rebuild in case of fire. ib.
         covenant by lessor to procure lord's assent to lease. 56
                       lessee to take beer, &c. of lessor, ib.
                       lessor to provide good beer, &c. 16.
         as to course of husbandry, &cc. 57
              to maintain barns, &c. ib.
               cleanse hedging, ib.
               not to destroy trees, ib.
               not to sow two white crops, ib.
               preserve trees. ib.
              consume hay which shall grow on premises, and spread manure, ib.
              permit lessor, &c. to enter in the spring before the expiration of term, 58
               preserve fruit trees, ib.
               lessee to take a way-going crop off one third of land, ib.
         lease to contain all covenants contained in an indenture of lease, ib.
         and all other usual covenants. ib.
                 usual covenants of the neighbourhood, 59
                 clauses required by statute, ib.
                 clauses contained in leases of houses in London, ib.
         but so that no covenant shall cause a forfeiture. ib.
         recital of indentures of lease and release whereby premises are conveyed,
            &c. ib.
                    agreement to erect buildings immediately, and that owners have
                 appointed architect, 60
          that architect has prepared plans, ib.
         agreement to build, ib.
                     where the undertaking is small, 60. n.
         that builders will erect the buildings, ib.
         architect allowed to make alteration, 61
         where there is a mutual architect. 61. n.
         that no alteration shall be made without the written authority of the archi-
         that the value of the alteration shall be ascertained, ib.
         time of completion, ib.
         agreement as to time of completing alterations, 62
         that if buildings are not completed by the time fixed, builders shall pay
         pounds a week until they are completed, ib.
         materials to be provided by builders, ib.
         that no materials shall be removed without the consent of architect, ib.
          and the directions of such person as architect shall appoint to be followed, 63
         superintendent to furnish plans to builders to be signed by architect, ib.
          builders to employ foreman [in each trade], ib.
          and such workmen as architect shall approve, ib.
         incompetent workmen to be dismissed, ib.
         no task work to be permitted, 64
          expenses to be borne by builders, ib.
          power given to architect to reject materials, ib.
          and to require alterations to be made by builders, ib.
          if builders shall not make the necessary alterations, architect may employ
            another builder, 65
```

AGREEMENTS—continued that if alterations shall be made by other builders, expenses shall be paid by builders, 64 builders to make good all damages except damages by fire, 65 sum to be paid to builders, 66 pay price of building at one time, ib. pay workmen's wages. ib. price of buildings to be paid by instalments, 67 that if architect shall not certify, owners shall pay sum by way of liquidated damages, and interest on the several sums, ib. arbitration clause, 68 for exchanges, recital of agreement to exchange, 69 that A B will deliver abstract of one set of premises to C D, ib. and execute necessary conveyance, ib. where the property is leasehold, ib. n. covenant by CD to deliver abstract to AB of the other set of parcels, 70 and execute conveyance, 71 clause to rebut right of entry, ib. agreement as to costs of conveyance, ib. as to costs of fines, recoveries, &c. ib. referees to determine whether any money should be paid for equality of exchange, ib. agreement to pay equality money, ib costs of commissioners to be equally paid, ib. for partition. recital of seisin of partners, 72 possession of leaseholds, ib. agreement to effect partition. ib. agreement that one party shall take certain premises, and another certain other premises, ib. referees to be appointed, 73 to determine equality of partition with full powers, ib. provision for appointment of umpire, ib. equality money to be paid within three months, ib. referees to determine which of the parties shall pay rent, 74 that referees shall make survey, ib. referees to determine who shall have title deeds, ib. that deeds relating to any one part shall be delivered to the party entitled thereto, and all other deeds to a third person who shall covenant to produce them, ib. when the money to be paid for equality shall be settled, parties shall carry partition into effect, 75 agreement to procure lord's assent, ib. that expenses of agreement, &c. to be incurred in effecting partition shall be equally divided, but costs of separate conveyances to be borne by each party, ib. power to appoint new referees or commissioners, ib. agreement that partition shall be made by commissioners, 76 parties to draw lots for the privilege of the first choice, ib. that commissioners shall decide the allotments of the parties, 77 for reference to arbitration, that differences exist, ib. that disputes shall be referred to arbitrator, ib.

```
AGREEMENTS—continued.
           provision for the appointment of an umpire, 77
           reference to be made a rule of court, 78
           parties to produce all deeds, &c. ib.
                   will do all in their power to make the award complete, ib.
           arbitrator to go into parol evidence, and examine parties and witnesses
              on oath, ib.
           solicitor of each party to deliver a statement of the matter intended to be
              referred by him, ib.
                                      days' notice of his intended sitting. 79
           arbitrator to give
           power to dismiss suit, ib.
           reference not to dissolve injunction, ib.
           but power to arbitrator to dissolve it, ib.
           power to arbitrator to enlarge time, ib.
           power to arbitrator to proceed exparte, ib.
           covenant to keep the award, 80
           the costs of the arbitration to be at the discretion of arbitrator, ib.
           no suit to be brought in relation to the premises, ib.
      miscellaneous agreements,
           agreement to enfranchise. ib.
           and execute proper conveyance, 81
           reference to other clauses, ib. n.
           contract for purchase of copyright, ib.
           agreement to sell the same, ib.
           work to consist of
                                       sheets, ib.
           author to correct sheets, &c. and complete within
                                                                          months, ib.
           and will assign copyright, 82
           that the publisher shall pay purchase money by instalments, ib. and all expenses of the publication, ib.
           allow author
                              copies. ib.
           exert himself for sale, ib.
           in case of second edition, author agrees to make the same as complete as
              possible, 85
           and assign the copyright thereof, ib.
           publisher to pay the sum of pounds, 83 if author should refuse, power to publisher to engage another editor, ib.
           profits to be divided between author and publisher, ib.
           that property of work is in author ib.
                 publisher shall publish the work by commission, 84
                author will furnish copy, ib. publisher will indemnify author from all loss, ib.
                           may pay expenses out of proceeds ib.
                            has lately published a certain work, ib.
            demand for a new edition, ib.
            that editor has agreed to edit same, ib.
            testatum whereby in consideration of the sum of
                                                                        pounds, editor agrees
              to edit, ib.
            and correct the proof sheets, ib.
            and complete the work by the
                                                               ib.
            and make all proper additions thereto, ib.
           agreement by publisher to pay remuneration as hereinafter is mentioned, ib.
where it is payable by one instalment, 85 n.
recital that a work has been published abroad, 86
            and that publisher is desirous of having a translation, ib.
```

```
AGREEMENTS—continued.
    agreement to translate, 86
    desire to have engraving, ib.
     agreement to engrave, ib.
     size of engraving, ib.
     time of completion, 87
     number of impressions, ib.
     payment of consideration money, ib.
     number of copies which engraver is to have. ib.
     recital that principals carry on trade, ib.
     agreement with factor that agency shall be carried on in
                                                                     street. ib.
                by factor to receive all goods consigned to him and warehouse the
       same, 88
     to exert himself for the benefit of the concern. ib.
     that he shall not engage in any other concern, ib.
     obey orders of principals, ib.
     and where no orders are given, shall act according to his judgment, ib.
     sell goods at price fixed by principals, and if no directions, at the highest
     endeavour to procure the greatest sale of the goods, 89
     ascertain character of debtors. ib.
     shall not give credit beyond
                                        months, ib.
                                                      pounds, ib.
     nor give credit to a greater amount than
     and will accept bills, ib.
     and pay clerk, ib.
     and porter, 90
     shall give a monthly account of all matters relating to the concern, ib.
     that he will pay over receipts twice a year, ib.
     and keep books of account, ib.
     to be open to inspection of principals, ib.
     factor to adjust balance twice a year, 91
     and preserve books of account, ib.
     and deliver up at the end of the concern the goods in his hands and all books,
       &c, ib.
     covenant by principals, 91
     to consign goods at their own costs, ib.
                pounds per cent. commission, ib.
     pay salary, 92
     to pay all expenses incurred, ib.
     that factor may reside in house, ib.
     will not appoint other agent, ib.
     appointment of factor to be the attorney of principals, ib.
     factor not to be answerable for accidents, 93
     provision for the termination of the agreement, ib.
               for referring disputes to arbitration, 94
                                                                            pounds and
     agreement to charge lands with the repayment of the sum of
       interest, 95
                to pay sum to trustees for the payment of debts of another, ib.
                to receive the said sum in full discharge of all claims respecting a
        legacy, 96
                to pay a debt, ib.
                to dismiss a suit, 97
     that AB will cause the same to be dismissed, ib.
     recital of seisin of advowson, ib.
```

```
AGREEMENTS—continued.
    that YY is at present incumbent, 97
    agreement that on a vacancy CD will present such person as AB shall ap-
       point, 98
     agreement to apply to parliament, ib.
     act to contain all proper clauses, ib.
     parties not to obstruct the passing of the act, ib.
     every party to sustain an equal share of expenses, 99
     A B to be the solicitor for obtaining the act, ib.
    conclusions of, ib.
     where an attorney signs for a principal, ib.
     by one, ib.
     to sell at a valuation will not be enforced if the price fixed be considerably
       below the real value, 17
    for leases
         of two sorts, 40
          doubt as to the propriety of, 40
     stamps to be impressed on, 100. See STAMPS.
     instrument in the form of a deed may operate as an, 101
    may run with the first person, 101
     where matter in, will be held to be surplusage, ib.
     to charge money secured by bond, 131
ANNUITY. See TRADE.
    agreement to grant for life or lives, 37
                                                          agreement to be void, 38
         if grantor should die before the
                                              day of
          expenses of grant of, to be born by grantor, 39
         provisions in agreement to grant, 38, 39
          covenant to pay, 39
     should always be secured on some property, 39
     recital of agreement to give bond on, 124
     condition that if obligor shall duly pay, 124
               and proportional part thereof, 124
                                                                           pounds.
         or if obligor shall after three months' notice tender the sum of
            and all arrears to obligee, bond to be void, 126.
     devise or bequest of, 176
     first time of payment of, should be mentioned, 176
     charge of, upon lands, ib.
     power of distress for, ib.
     provision that if annuitant shall alien or become bankrupt, it shall cease, 177
     bequest of, 178
     charge of several, upon real estate, ib.
     direction that, to females shall be for their separate use, ib.
     declaration that person entitled to estates may redeem, ib.
     trusts for securing, 195
     trust to pay, to AB, 199
          of term of years for further securing, 200
APPRAISEMENT
     agreement for purchaser to pay expenses of, 17
APPÖINTMENT
     of executors and guardians, 356
ARBITRATION
     clause for, in building agreement, 68
                  agreement between principal and factor, 94
```

```
ARBITRATION-continued,
     recital of agreement to submit disputes to, 148
     bond for, 148
ARBITRATOR.
     timber or furniture to be valued by, 15
     and if they disagree, by umpire, 16
    provision on failure of appointing, ib.
that any disputes as to sale shall be referred to, 24
     agreement that disputes shall be referred to, 77
     parties to produce all deeds before, 78
     to go into parol evidence and examine witnesses on oath, ib.
     solicitor of each party to deliver statement of matters entitled to be referred to. ib.
                days' notice of his intended sitting, 79
     to have power to dismiss suit. ib.
     power to, to dissolve injunction. ib.
               to enlarge time, ib.
               to proceed exparts, ib.
     expenses to be in discretion of, 80
     no suit to be brought against, ib.
ARCHITECT. See Builders.
     to be allowed to make alteration in buildings, 61
     that no alteration shall be made without written authority of. ib.
     that no materials shall be removed without consent of, 62
     and the directions of such person as, shall appoint, shall be followed, 63
     superintendant to furnish plans to builders to be signed by, ib.
     such workmen to be employed as, shall approve, ib.
     shall dismiss incompetent workmen. ib.
     power given to reject materials, &c. 64
     that if, shall not certify, owners shall pay sum by way of liquidated damages, 67
ARMS.
     request that the husband of daughters will take particular, 174
     as to enforcing such request, ib.
     proviso that every person taking, under certain limitations hereinbefore contained,
       shall bear certain, 344-346
ASSIGNMENT.
     as to whether a covenant against an, without license is a usual covenant, 64
ATTESTATION,
     of a will, forms of, 358
     must take place in the presence of testator, 358
     need not take place in the presence of the other witnesses, ib.
     what necessary for will of real estate, ib.
     of personal estate, ib.
     of a marksman is sufficient, ib.
     of a codicil, 360
ATTORNEY.
     commencement of agreement by, 2, and note (a)
AUTHOR. See Publisher.
     to correct sheets, &c. and complete within
                                                    months, 81
     and assign copyright, 82
     to be allowed
                      copies, 83
     in case of second or other editions, will make the same as complete as possible, ib.
     and assign copyright thereof, ib.
     recital of property of work being in, ib.
     that, shall furnish copy, 84
```

AWARD.

parties will do all in their power to make, complete, 78 agreement to keep, 80 that, shall be made a rule of court, 148 condition that if obligor shall abide by, 149 so that it be delivered by a certain day, bond to be void. 148. 149 B. BANKERS. bond for security of, 133, 135 recitals in, 133 condition that if obligors shall settle accounts with obligees, ib. and pay balance due thereupon, ib. and indemnify obligees from all claims 134 bond to be void, ib. variation where the security is to extend to new partners, 133, 134 condition that if principal, or sureties, will pay all the sums owing to obligees, 136 and interest, ib. and commission and expenses, ib. bond to be void, 137. BANKRUPT. where vendor may be, recital of agreement for bond by, 113 condition that if no commission of, shall issue within two months after such purchase or mortgage, or if commission shall issue of, obligees shall be indemnified, bond to be void. ib. provision guarding against annuitant becoming, 177 trust that until person shall become, trustees shall pay interest to AB for his life, and if such event should occur, then over, 219 variation for real estate, 219 n. BANKRUPTCY. a clause restricting assignment without license, not broken by, 47 BEER. covenant by lessee to take, of lessee, 56 by lessor to provide good, 56 lessee not bound by covenant to take, unless it is good, 56 agreement for privilege of fixing, 5 BEQUEST. it is doubtful whether a condition to alien is not broken by, 46 of leasehold house to trustees upon trust to permit wife to occupy the same during widowhood, 166 and after her decease or marriage, to form part of her personal estate, ib. of next presentation, ib. household goods to for life, ib. absolutely, ib. the whole of personal estate, 167 farming stock, ib. sum of money to charitable institution, ib. wearing apparel, 168

```
BEQUEST—continued.
       other bequests, ib. 168-170
       of leaseholds to trustees, 179, 180, 181, 205.
          monies to arise from particular funds, 184
          sum to trustees upon trust, ib.
          stock to trustees upon trust, ib.
          monies to arise on contingency, ib.
          monies secured by policy, ib.
BILL OF EXCHANGE
     recital that obligor hath drawn, on obligee, 152
     of agreement to give bond as a security, ib.
     condition that if obligor shall furnish obligee with the means of satisfying, bond
       to be void. ib.
BONDS.
    commencements,
                      of bond from one to one, 109
                      where the obligees are joint tenants, ib.
                                              tenants in common. ib.
                      where there are two obligors or obligors and surety, 110
                      where there are three or more obligors, ib.
     defective title, 111
          recitals, ib.
            agreement to give bond, ib.
          condition that if lands shall be quietly enjoyed by obligee, ib.
          then the bond to be void. ib.
          recitals, 112
            right to dower, ib.
            agreement for bond, ib.
          condition that if premises shall be held free from any claim of dower, ib.
          bond to be void, ib.
     where vendor may be bankrupt, 113
         recitals, ib.
            agreement for bond, ib.
          condition that if no commission of bankrupt shall issue within two months
            after purchase or mortgage, or if commission shall issue, and obligees
            shall be indemnified from harm on account thereof, 113
          then bond to be void, ib.
     where infants convey, 114
         recitals that doubts have been entertained as to what interest infants take in
            part of the premises, ib.
          agreement to enter into bond. ib.
          condition that if infants when of age shall execute conveyances, ib.
          and until conveyances, if obliger shall peaceably enjoy the premises, ib.
          bond to be void, 116
     where copyholds are conveyed, 116
         condition that if obligor was seized in fee at the time of the surrender, ib.
          and had good right to surrender, ib.
          and if obligee shall quietly enjoy the premises, ib.
         free from incumbrances, 117
          and if obligor shall further assure, ib.
         bond to be void, 118
    where good-will is assigned, 119
                                                               ib.
         recital that obligor has carried on business at
```

```
BONDS—continued,
       assignment of business, ib.
       agreement to enter into bond. ib.
    condition that if obligor shall not carry on the trade of a
                                                                        within
                              years. ib.
       miles, or before
       nor solicit any custom, ib.
           induce his customers not to deal with obligee. ib.
       bond to be void, ib.
    on mortgage, 120
       condition that if obligor shall pay mortgage money and interest, ib.
          bond to be void, ib.
       recital of conditional surrender by obligor to obligee in fee to secure the pay-
                                      pounds, and interest, 121
          ment of the sum of
       condition that if obligor shall pay the sum of
                                                                 pounds, and interest
            and all fines, &c. to obligee, 122
                 and if he was seized in fee, ib.
                 and had good right to surrender, ib.
                 and if default shall be made, obligee may enter and peaceably hold
                   premises, ib.
                 free from incumbrances, ib.
                 and shall further assure premises, 123
                 bond to be void, ib.
    on annuity, 124
       recitals of agreement to enter into bond, ib.
       condition that if obligor shall duly pay annuity, ib.
          and proportional part thereof, ib.
          or if obligor shall after three months' notice, tender the sum of
            pounds and all arrears to obligee, 125
          then bond to be void, ib.
     on marriage, 126
       recital that marriage is about to be solemnized, ib.
          and that obligor has agreed to make a settlement on intended wife and
          issue of marriage, ib.
       condition that if wife or issue shall be living at the death of obligor, his ex-
          ecutors shall pay obligees the sum of
                                                        pounds to be applied by them
          upon the trusts of a marriage settlement, ib.
       recital that marriage hath been agreed upon, 127
          that obligor has agreed to secure the sum of
                                                             pounds to trustees upon
            trust hereinafter declared, ib.
       condition that if marriage shall not take effect, or marriage shall take effect,
                               pounds shall be paid to obligees. id.
          and the sum of
               then bond to be void, ib.
               declaration that obligees shall stand possessed of sum upon trusts
                 of marriage settlement, ib.
     for payment of money, 128
       recital that sureties have agreed to join, ib.
       condition that if obligor shall pay the sum of
                                                            pounds, ib.
            bond to be void, ib.
       where money is payable by instalments, ib. n. (c)
        where money is payable on notice, ib.
       condition for securing the payment of
                                                       pounds by half-yearly instal-
          ments, 129
       and interest for the same, 130
             agreement to charge sum secured by bond, 131
```

```
BONDS-continued.
         testatum, whereby obligor charges the money mentioned in bond on his
            real estate. ib.
     for transfer of stock, 132
         condition that if obligor shall transfer stock to trustees within twelve
            months, ib
                  and pay interest till the same is transferred, ib.
                  bond to be void, ib.
     for security of bankers, 133
         recital that obligors carry on the business of a
                                                             in the country, ib.
          condition that if obligors shall settle all accounts with obligees, ib.
                  and shall pay balance found due therefrom. ib.
                  and shall indemnify obligees from all demands, 134
         bond to be void, ib.
         variation for new partners, 133, n (a)
         recital that obligees carry on business. 135
         that obligor carries on business, ib.
         that obligees have opened an account with obligor on having the balance
            due thereon secured by the bond of principal and sureties, ib.
          condition that if principal or sureties will pay all the sums owing to the
            obligees, 136
                 and interest for the same after they shall become due, ib.
                 and commission and expenses, ib.
                 then bond to be void, 137
                                                pounds shall be recoverable on the
          proviso that no larger sum than
               bond, lb.
          variation for new partners, 133 n. 134 n.
     for security of agent, 138
         recital of agreement to act as agent for solicitor in the country. ib.
               agreement for bond, ib.
          condition that if obligor shall pay all monies which shall be due bond to be
               void. ib.
     for performance of covenants, 139
         condition that if obligor shall perform covenants contained in an indenture
            of even date, ib.
         bond to be void, ib.
     for clerks, 140
         recital of agreement to take clerk into service, ib.
         agreement to become sureties, ib.
         condition that if obligor shall pay over all monies, ib.
              and shall not deface or waste property, ib.
               nor divulge secrets, 141 n. (a)
         recital of application to be taken as clerk, and agreement thereto, 142
              that alterations may take place in firm, ib.
               agreement to obviate inconvenience arising therefrom, ib.
         condition that if obligor shall faithfully serve obligees, ib.
              and if obligor shall not embezzle monies, ib.
              or act fraudulently or deceitfully, 143
              bond to be void. ib.
         provision that the introduction of new partners in the first shall not affect
            the security, ib.
    for collector, 144
         recital that obligee is possessed of chapel, ib.
```

```
BONDS-continued.
         that obligee hath appointed principal, ib.
         agreement as to his per-centage, ib.
         and that sureties should join in security, ib.
         condition that if principal shall collect the monies, ib.
         and render an account thereof. 145
              pay over all monies, ib.
              deliver over all books, ib.
              in every respect perform the duties of his office, bond to be void, ib.
    to refund legacy, 146
       recital of bequest of legacy, ib.
       that the amount of the debts has not been ascertained, but belief that there
          are sufficient assets, ib.
          agreement to pay legacy, ib.
          condition that if personal estate shall prove insufficient to discharge debts
            and legacies, ib.
          and legatee shall refund his proportion, ib.
          and shall indemnify executor from all demands, ib.
          bond to be void, ib.
    post obit. 147
          recital of contract for purchase, ib.
          payment of consideration, ib.
          agreement for bond. ib.
          condition that if obligor should be living at the decease of his uncle, and
            should pay the sum advanced. ib.
          or should die in the lifetime of obligor, ib.
          bond to be void, ib.
    for arbitration, 148
          recital that disputes exist, and agreement to refer them to arbitration, ib.
          and in case of difference to choose umpire. ib.
          and that the award shall be made a rule of court, ib.
          condition that if obligor shall abide by award, ib.
          so that the award be delivered by a certain day, ib.
          and if umpire be appointed, if obligor shall abide by his award. 149
          bond to be void. ib.
          agreement that submission shall be made a rule of court, ib.
     miscellaneous, 150
          recital that obligor has agreed to execute indentures on having an indemnity, ib.
          condition that if obligor shall indemnify obligee from all losses to be sustained
            in consequence of executing indentures, 150
          bond to be void, ib.
    recital of agreement to build, 151
          agreement to enter into bond, ib.
          condition that if obligor shall complete buildings within
                                                                               months.
            bond to be void, ib.
       that obligor has drawn a bill on obligee, which he hath agreed to accept, 152
       agreement to give bond as security, ib.
       condition that if obligor shall furnish obligee with the means of satisfying the
          bill, ib.
          bond shall be void, ib.
     that trustee has agreed to enter into a bond for the due execution of trusts, 153.
       condition that if trustee shall duly apply the monies, ib.
       bond shall be void, ib.
    entire form, 154
```

```
BONDS-continued.
         commencement, ib.
         condition that if obligor shall pay the sum of
                                                           pounds, and interest, ib.
         bond to be void. ib.
    of special resignation, as well as of general resignation, void, 204
BROTHERS
    if no children, trust monies to go to, 275
     shares of, without issue, to go to the surviving, 275
    proviso that if, and sisters die in testators life-time, leaving issue, then the share
       shall go to their issue, 276
BUILD-See AGREEMENT.
     agreement to, 60
                recital in, ib.
                provisions in, 60-
     recital of agreement to, 151
     condition, that if obligor shall, within
                                               months, a chapel and other buildings,
       bond shall be void. 151
BUILDER.
     agreement that, will erect buildings, 60
     materials to be provided by, 62
     to employ foreman in each trade, 63
     if, shall not make necessary alterations architect may employ another, 65
     that if alterations are made by other, expenses shall be paid by, ib.
     to make good all damages, except by fire, ib. sums to be paid to, 66
BUILDINGS.
     stipulation as to time of completing, 61
     that if, are not completed by time fixed, builder shall pay certain sums, 62
     agreement to pay price of, at one time, 66
     price of, to be paid by instalments, 67
     power to grant leases for, 328
BURIAL.
     desire of, in particular place, 157
                                         C.
CESSER.
     of term, proviso for, 201, 239
CHAPEL,
     bond for the collector of, 144
     bond for building a, 151
CHARGE,
     agreement to, lands with the payment of a sum of money, 95
                              money secured by bond, 131
     of debts and legacies on real estate, 162, 163
     of annuity upon lands, 176, 178
CHARITABLE INSTITUTION,
     bequest of sum to, 167
     direction as to the receipt, 167
                              should always be inserted, 168
CHILDREN-See Illegitimate, Trade.
     limitations of real estate in favour of, 187
         to the use of, as tenants in common, with cross remainders 187
         rules as to gifts to, 187, 188
```

```
CHILDREN—continued.
          to the use of all testator's, in tail with cross remainders, 225
                        such, of AB as AB shall appoint, 223
          and in default of appointment, ib.
          to the use of all the, as tenants in common, 223
                        son for life, 224
          and after his decease. ib.
          to the use of his sons in tail male, ib.
          in default of issue, to second son for life ib.
          to the use of trustees to preserve, ib.
                        third and other sons successively for life, ib.
          variation for female devisees, nephews, &c, 224, n.
                       different estates tail. ib.
          and after their respective decease to their sons successively in tail, 225
          to daughters as tenants in common in tail, ib.
             the use of trustees for 99 years upon the same trusts for the benefit of
               daughter and her issue, as are declared in favour of another, ib.
          to all the sons for life, ib.
             trustees to preserve contingent remainders. 226
          and on failure of such estates, ib.
          to sons for term of years, ib.
             trustees to preserve, ib.
             eldest son for life, 227
          and after his decease to his sons in tail male. ib.
          to second son for life, ib.
             his sons in tail male, ib.
             third and other sons for life, ib.
             their sons in tail male, ib.
             eldest daughter for life, 228
             her sons in tail male, ib.
             second and other daughters for life, ib.
             their sons respectively in tail male, ib.
             sons of sons in tail general, ib.
                      daughters in tail general, 229
             daughters of eldest son in tail general, ib.
                           second son in tail general, ib.
                           eldest daughter in tail general ib.
                           second and other daughters in tail general, ib.
             trustees to preserve, 230
          proviso that if A B shall have sons born in the life-time of testator, they shall
             take life estates instead of estates tail, remainder to trustees, remainder to
             sons in tail, ib.
          similar proviso as to daughters, ib.
          to the use of such, of A B by C D as AB shall by deed or will appoint, 231
             trustees to preserve during the life of eldest daughter, and to pay the
             rents to her separate use, ib.
          receipt clause, ib.
          to her sons in tail, and in default to second daughter in same manner, ib.
             trustees during respective life of testator's second and other daughters, to
              apply rents for their benefit, and remainder to their sons in tail male, 232
             daughters for life as tenants in common, ib.
              trustees to preserve contingent remainders of respective shares, ib.
           respective shares to go to first and other sons of every daughter, and in de-
              fault of issue, as well the original as the accruing share shall go, ib.
```

```
CHILDREN—continued.
          accruing share to go as original shares, and in default of all issue except of
            one daughter, as to entirety, ib.
          to daughter for life, to trustees to preserve, ib.
             sons in tail, ib.
          trusts of term of years in favour of,
                             to raise portions for younger, 234
                             another form, 235
          provisions relating to real estate for the benefit of,
          provision for the survivorship and accruer of shares, 236
                       maintenance of, out of the rents, 237
                       advancement of.
          that remainder man shall receive the rents subject to the term, 239
                             pounds shall be paid to sons or daughters for maintenance
          direction that
                                            pounds after twelve years till twenty-one
             until twelve years, and
             vears, 240
          accumulation clause, 241
          trustees to apply sums for maintenance, ib.
               and invest the residue, ib.
               and discharge sums charged on the estate, ib.
               and invest the residue in purchase of lands to be settled to the uses of
                 the will, 242
               stand possessed of accumulations upon trusts aforesaid, ib.
          proviso that an offer shall be made to eldest son to purchase premises when
            they are sold, 243
    trusts of personalty in favour of,
          trusts for all the, 245
          as to shares of sons absolutely, ib.
          but if daughters are married, shares to be for their separate use, ib.
          the same by reference for survivorship clause, 246
          and after decease of daughter, stock to be in trust, ib.
         if daughter shall have no issue upon trust to pay moiety as daughter shall
            appoint, and in default, in trust for such persons as are entitled un-
            der the statutes of distributions, ib.
         and as to the other moiety in trust, 247
         if no child shall be entitled, trust monies to sink into residue, ib.
         or go to AB absolutely, ib.
         if no child shall attain a certain age trust monies shall be, ib.
         in trust for daughters, ib.
                   for all testators, at twenty-one years or marriage, or if any die
            under that age their share to go to the survivors, ib.
                 for the younger equally, and if but one to that one, ib.
         in default of such issue to eldest son, 248
         trusts of a sum of money for the benefit of the, as parents shall appoint, 249
         and in default of appointment, ib.
         in trust for all the, ib.
         appointed shares to be brought into hotchpot, ib.
         provision for the survivorship and accruer of shares, 250
                          maintenance and education of the, 251
                          advancement of the, 252
         accumulation clause for personalty, 253.
         proviso for maintenance (very short) 254 advancement ( ) ib.
               maintenance and education of, out of the interest of their shares, 255
         and accumulation of the residue, ib.
```

# CHILDREN—continued.

invest and vary the securities, 255

and stand possessed of the accumulations upon the same trusts as are declared of the funds out of which the accumulations are to proceed, 255 proviso for the maintenance of single child, 256

advancement *ib*.

that till a sufficient part of the trust monies are invested, trustees shall pay wife's annuity and advancement out of the sums in their hands, 257 trust of a second sum to invest and vary (short) 258

and stand possessed thereof upon the same trusts for the benefit of the children of MB as have already been declared of the children of J B 258

trust for the, of daughters and their issue, 259

and if no child or issue to daughter as personal estate, ib.

if there shall be no child, then the sum to be upon the same trusts as are declared of another sum, 260

proviso for double portion to eldest or only son, ib.

that if any daughter shall marry without consent, trustees shall stand possessed of her portion, 261

in trust for the other, ib.

for her separate use, 262

and after her decease to her, ib.

and if no, to testators, in the same manner as their original shares, ib. power to daughter to appoint the interest of her share to her husband, 263 proviso that if any child shall die in testator's lifetime leaving issue, such issue shall have child's share, 264

trust to accumulate the rents and profits of lands for twenty-one years, 265 for twenty-one years, 266

in trust that when any child of son shall attain the age of twenty-one years, to raise a sum for its benefit. ib.

and raise other sums for others, until sum shall be exhausted, 267

but if sum shall not be exhausted during that period, residue to go to such, as shall attain twenty-one years, ib.

trust to raise the sum of pounds during the minority of children, and pay it to wife for their maintenance and education, ib.

in trust for all the, for their lives, 269

and after their decease as to their respective shares, ib.

in trust for their children respectively, ib.

provision for the survivorship of shares in favour of the, and their, ib.

trust for particular grandchildren of testator, 270

declaration that portions shall be in satisfaction of portions provided by indenture, ib.

proviso that if, do not take, their shares shall go to their issue, 271

provision that if any of the sons shall die before they attain twenty-five years, shares in trust money to be, 272

in trust for his issue as he shall appoint, ib.

and in default of appointment, ib.

in trust for issue at twenty-one years, or if daughters, at twenty-one years or marriage, ib.

and if there shall be no issue, the share shall be in trust for all the others, 273 provision that shares of daughters shall be to their separate use, ib. their receipts to be valid discharges, ib.

and after their decease their shares to go to their issue as they shall appoint, 274

in default of appointment to all the children equally, ib.

if daughter shall die without issue, their shares to go to the surviving, ib.

```
CLAIMS.
     agreement to accept legacy in discharge of all, respecting legacy, 96
CLERK.
    recital of agreement to take, into service, 140, 142
    condition that if he shall pay over all monies, 140
    and shall not deface or waste property, bond to be void, 140, 141
     recital that alteration may take place in firm, 142
            of agreement to obviate inconveniences arising from, as to, 142
     condition that if, shall faithfully serve obligees, ib.
     and if he shall not embezzle monies, ib.
     or act fraudulently or deceitfully, 143
     bond to be void, ib.
CODICILS
     recital that testator has in his will bequeathed property to two trustees, 359
     and that he has given each of them a legacy, ib.
     death of one trustee, ib.
     revocation of devise, bequest, and legacy, ib.
     appointment of new trustees, ib.
     devise and bequest of property to them upon the trusts of the will, ib.
     legacy to new trustees, 360
     signature and attestation, ib.
     devising lands contracted for since the date of the will, 361
     must be executed with the same formalities as a will, ib.
COGNOVIT.
     as to proper stamp on, 104
COLLECTOR.
     recital of appointment of A B to be, 144
     agreement as to his per centage, ib.
     and that surety should join in security for, ib.
     condition that if he shall collect all monies, ib.
     and render an account thereof. 145
         pay over monies, ib.
         deliver over all monies, ib.
         perform all the duties of, bond to be void, ib.
COMMENCEMENT
     of agreements, 1, 2.
     in agreements of importance, particular, should be adopted, 2.
     of bonds, 109, 110
        will, 157
        declaration of trusts, 192, 193
        powers, 315-317
COMMISSIONER.
     agreement to pay expenses of, on exchange, 71
     provision for appointment of, on partition, 73
     to determine which of the parties shall pay rent, 74
                                            make survey, ib.
                                            have title deeds, ib.
     power to appoint new, 75
     agreement that partition shall be made by, 76
     that, shall decide allotment of parties, 77
CONCLUSIONS
     of agreements, 99
     of bond, 112
```

```
CONDITION.
    to be contained in agreement for lease, giving a re-entry on bankruptcy of
      lessee, 47
CONSIDERATION
    money to be paid hereafter, 3
    statement of payment of, 14
                          by instalments, 15
    of money paid and to be paid. 31
    agreement to pay, for annuity, 38
    of natural love and affection, 39
CONVERT
    trust to, sum into money, 209
CONVEYANCE,
    agreement to execute necessary, 69, 70
COPĂRCENERS,
    recital of seisin, as, 72
COPYHOLDS.
    variation in agreement where they are purchased, 7. n. (e)
    agreement to surrender, 10
    that on surrender of, purchaser will pay purchase money, 11
    that purchaser shall pay expenses of surrender of, ib.
    covenant to procure lessor's assent to lease of, 56
    agreement for exchange of, 69, 71
    provisions on partition of, 71, 72 n.-77
    bond where, are conveyed, containing covenants for title, 117
    recital of conditional surrender of, to secure payment of
                                                                       pounds and
      interest, 121
    condition that if obligor shall pay the sum of
                                                        pounds and interest and all
       fines, &c. to obligee, 122
    and if he was seised in fee, 122
    and had good right to surrender, ib.
    and if default shall be made, if obligee may enter and peaceably hold the pre-
       mises, bond shall be void, 123
    power to enfranchise, 322
    should never be devised to trustees, but power to sell should be given, 329
COPYRIGHT,
    recital of contract for, 81
    agreement to sell, ib.
               to assign, 82
COVENANT.
    mutual, by each party with the other to perform his part of agreement, 2
    to convey premises on or before the
                                            day of
    by purchaser to pay purchase money, 4
    references to acts of person for which vendor is to covenant, should not be
       inserted in agreement, 8
    agreement to enter into, for title of copyholds, 11
               by purchaser of leaseholds to perform, 15
                  purchaser to pay purchase money by instalments, ib.
    to use every exertion to procure deeds, 25
    by vendor that if purchaser is desirous of disposing of property, vendor will
       repurchase at the sum of
                                     pounds, 28
    by vendor to convey premises on repurchase, ib.
    for title of leaseholds,
         that lease is good, 33
```

```
COVENANT-continued.
          good right to assign, 34 for quiet enjoyment, ib.
          free from incumbrances, ib.
          for further assurance, 35
     by purchaser to pay residue of purchase money. 36
     and that if default shall be made therein vendor may enter, ib.
     to be contained in grant of annuity, 38
        pay annuity, 39
        grant lease, when lessee shall have built house. 41
     that when certain works shall be finished lessor will grant lease, 42
     to be contained in lease, by the lessee, 45
          to pay rent, ib.
                  taxes, ib.
             repair, ib.
             paint outside once in three years, ib.
                   inside once in seven years, 46
             pay share of expenses of drain. ib.
          and not to suffer fixtures to be removed, ib.
          nor assign without license, 47
          to permit lessor to enter upon premises, and make schedule of fixtures, ib.
          not to carry on trade of any kind, ib.
                           particular trades, ib.
     by lessee to accept lease, 49
     to pay expenses of agreement and of lease, and employ person lessor chooses, ib.
     that assignee shall, to indemnify lessee from loss, 50
           lessor shall, to produce deeds, ib.
     and to endeavour to procure renewal, ib.
           shall be contained in lease, not to expose goods outside the premises, ib.
                                       to paint premises of a certain colour, 51
                                       not to remove doors, ib.
                                       to repair chancel and indemnify vendor there-
                                         from, ib.
     by lessor to build house or houses according to specification, 52
     to expend
                       pounds therein, ib.
     that no bricks shall be made or gravel dug, 53
     to employ lessor's surveyor, ib.
     pay architect's per-centage, ib.
          proportion of expenses for cutting drains, ib.
      to paper rooms on three floors, ib.
      set up dresser, 54
     complete premises, ib.
     to complete house, ib.
     to repair, 55
     expend a certain sum, ib.
      to be contained in lease by lessor, ib.
                      for quiet enjoyment, ib.
                      to rebuild in case of fire, ib.
     by lessor to procure lord's assent to lease, 56
         lessee to take beer, &c. of lessor, ib.
         lessor to provide good beer, ib.
     to be contained in lease of farm as to course of husbandry, 57, 58
     every, to be contained in lease should be mentioned in agreement, and not
        left to the expression "usual covenants," 58
```

## COVENANT-continued. all covenants contained in indenture of lease to be contained in indenture of lease, 58 and all other usual covenants, ib. all usual covenants of the neighbourhood, 59 required by statute, ib. contained in leases of houses in London, ib. but so that no, shall cause a forfeiture ib. by principals with factor, 91 bond for the performance of, 139 COUNSEL. conveyance to be approved by, of each party, 9 each party to pay fees of his, ib. COURT. agreement for use of, 5 D of agreement, 1 DAUGHTERS. See CHILDREN. DEBTS, agreement to pay sum to trustees for the, of another. 95 to pay, 96 not necessary to recite the way in which the, were contracted, ib. some consideration must be expressed, as agreement to pay, ib. general charge of, on real estates, 162 when proper, ib. charge of, on real estate, in case of deficiency of personalty, ib. power to raise sufficient for, by sale or mortgage, ib. direction that real estate may be resorted to for the payment of, before personal estate is got in, 163 executors shall pay such, as shall be proved, ib. proviso that personal estate shall be the primary fund, the rents and profits of land the next, and the produce of sale of part of lands the ultimate fund for payment of, and legacies, 164 bequest of, and discharge therefrom, 169 trust to raise sufficient to pay, out of real estate, 194 and apply the money in payment of, ib. trust to pay, and legacies generally, 195 DECLARATION. See Proviso, Trust, Trade. that trustees shall stand possessed of purchase money upon certain trusts for security of purchaser, 25 that obligees shall stand possessed of sum upon trusts of marriage settlement, that subject to term, remainder man shall receive the rents, 200 that devise and bequest to A B are made on condition that he acquiesce therein, and carry the same into effect, 349 that trustees shall lay out money in freehold, copyhold, or leasehold estates, 350 that trustees receipts shall be sufficient discharges, 355 where this clause should be placed in a will, ib. DEFEAZANCE that purchaser will execute, reviving condition, 14 as to proper stamp on, 104

DEPOSIT. where part of the purchase money is paid by way of, 7 n. (f) proper stamp on memorandum of, of deeds, 104 DEVISE of a messuage in fee, 165 to two as tenants in common, in fee, ib. of premises contracted for, to purchaser, in fee, ib. house to wife, or any other person for life, ib. moiety of lands in fee, 166 general, of freehold, copyhold, and leasehold estates to trustees, upon the trusts hereinafter declared, 179 except a particular messuage, 179 n. 180 trust or mortgage estates, 179 n. settled property, ib. of messuage to, 185 of trust and mortgage estates, 354 DIRECTION. See LEGACY, TRADE. that real estate may be resorted to, before personalty is got in, 162 to indemnify real estate, 163 that executors shall pay such debts as shall be proved, and settle all accounts, is. that particular sum shall be raised out of particular estate, 164 that if title shall turn out bad, purchase money shall sink into residue, 165 as to legacies, 171-175. that executor shall regulate what passes by the will, 175 as to profits, until estate is sold, 196 persons entitled to interest and dividends of monies to arise from sale, will also be entitled to rents and profits, before the sale, ib. that in settlement, proper estate shall be limited to trustees to preserve. 200 that variation shall be with the consent of wife, and after her decease at the discretion of trustees, 208 that leaseholds shall not vest absolutely in tenant in tail, 218 pounds shall be paid to sons or daughters until twelve, and after twelve till twenty-one, 240 that trustees should receive rents until premises are sold for the benefit of persons entitled to interest, 330 that if a second estate shall devolve on son, he shall have the same powers over it as are given him over the first, 348 DISTRIBUTIONS. statute of, trust for persons entitled under, 214 DOWER. See WIFE. recital of right to, 112 agreement for bond to remedy such defect, 112 condition that if premises shall be held free from any claim of, bond shall be void, ib. provision to be in bar of, ib.

E.

EDITOR,

recital that, has agreed to edit work, 84
agreement in consideration of the sum of pounds accordingly, 85
and to correct proof sheets, ib.

```
EDITOR—continued.
          and complete work by the
                                                         . 85
                                           day of
         and make all proper additions thereto, ib.
EDUCATION. See Maintenance.
ENGRAVING.
     recital of desire to have, 86
     agreement to make, ib.
                as to size of, ib.
                     time of completion, 87
                     number of impressions of, ib.
                               impressions which engraver is to have, ib.
     necessity of stipulation for, ib.
ENFRANCHISE.
     recital of agreement to, 80
         agreement by lord to execute proper conveyance, 81
          reference to other clauses, ib. n.
     power to, copyholds, 323
ENTIRE FORM
     of agreement for purchase of property, 106-108
     of bond for payment of money, 154
     of will, chiefly of real estate, 363
            of personal estate, 378
ENTRY,
     right of, clause to rebut, 71
EQUĂLITY.
                See Exchange, Partition, Powers.
     money for, referees to determine if any should be paid on exchange, ib.
                agreement to pay, ib.
                referees to determine if any should be paid on partition, 73
            to be paid within three months, 74
EXCHANGE,
     that title of lands given in, shall not be required, 23
                      received in, under inclosure act shall not be required, ib.
     clauses in agreement for, 69-71
     recital of agreement to, 69
     where the property is leasehold, 69 n.
                          copyhold, 70 n. 71 n.
     power to sell and, 317-320
EXECUTORS.
     direction as to insertion of, in agreement, 1
     commencement of agreement by, 2
     appointment of, 158, 356
     suggestion as to place of appointment of, 158, 356
     direction that, may continue money on security, 163
     direction to, to pay such debts as shall be proved, ib.
     direction to, to settle all accounts. ib.
     when it should be inserted, ib.
     may refer matter to arbitration, but in case of loss, will be guilty of a devastavit, ib.
     bequest to, 168
     if, are to have legacy, although they do not act, it should be so stated, ib.
     direction that, shall regulate any doubt as to what passes by bequest, 175
EXEMPTION
     of personal estate from the payment of debts and legacies, 163
     unless real estate is ample, personal estate will not be exempted under this, ib.
     must be clearly expressed, 164
```

## EXPENSE. agreement as to, of abstracts and conveyances. 7 conveyance to be at purchaser's, 9 of fines, recoveries, and assignments of terms not before assigned, shall be borne by vendor, ib. of acts of parliament to be paid by vendor, ib. that purchaser will pay, of surrender, 11 and vendor, of fine and recovery, ib. that purchaser shall pay, of appraisement, 17 that vendor shall pay, of covenant to produce deeds, and of attested copies, 19 that purchaser shall be at, of discharging incumbrances, 20 purchaser to pay share of, of inclosure act, 20 of administration to be borne by purchaser, 22 that, of assigning particular term shall be borne by purchaser. ib of evidence of title to be borne by purchaser, ib. that, of agreement to grant annuity, and of the grant itself, shall be borne by grantor, 38, 39 of agreement, and of lease to be borne by lessee, 49 to be borne by builders, 64 of conveyance, and of fines and recoveries in exchange, how to be borne. 71 of partition, how to be borne, 75 as to, of arbitration, 80 F. FACTOR, recital of request to act as, 87 that, shall carry on business in street. ib. agreement by, to receive all goods consigned to him, and warehouse the same, 88 will exert himself for benefit of concern, ib. shall not engage in any other concern, ib. shall obey orders of principals, ib. and where no orders are given will act according to his judgment, ib. will sell goods at price fixed by principals, and if no directions at highest price, 89 endeavour to procure the greatest sale of the goods, ib. ascertain character of debtors, ib. not give credit beyond months, 89 to a greater amount than pounds. ib. accept bills. ib. pay clerk, ib. and porter, 90 give monthly account of all matters relating to the concern, ib. pay over receipts twice a year, ib. and keep books of accounts, ib. to be open to inspection of principals, ib. will adjust balance twice a-year, 91 preserve books of account, ib. deliver books and goods, ib. to reside in house, 92 appointment of, to be attorney of principal, ib.

not to be answerable for accidents, ib.

FARM.

description of, 5 habendum in agreement for lease of, 43 covenants to be contained in lease of, 57, 58

FARMING STOCK, bequest of, 167

FINE.

expenses of, to be borne by vendor, 9, 11

FOREIGN COUNTRY.

as to stamp of agreement executed in, 163

FIXTURES,

that purchaser shall take, at a valuation, 17

FURNITURE.

description of, 4

provision for the valuation of, 15, 16

lessor may distrain, whether a house contain, or not, 42

trusts of, as heirlooms, 220, 221

provision as to repairing, exchanging and altering, 221

gift of, to natural child, 277

G.

GLEBE LANDS,

description of, 5

GOODS.

what the proper stamp on agreements for the sale of, 105

for the making of, ib.
of goods not in existence, 106

bond as a security for, advanced to tradesman, 135 n. 136 n.

household, bequest of, for life, 166

absolutely, ib.

in particular house, ib.

generally, 166 n.

with exception, ib.

GOODWILL,

provision that sons shall pay nothing for, 290

GRANDCHILDREN, See Children.

GUARDIANS.

appointment of wife, and after her decease of A B and C D to be, 356 the office of, will go to survivor, ib.

Н.

HABENDUM,

in agreement for lease of house, 43 farm, ib.

HEIR LOOMS,

trusts of chattels as, 220, 222

HEIRS.

direction as to the insertion of, in agreement, I covenant to convey lands, although they are not named, 2

HOTCHPOT clause, 249 HOUSE in town, description of, 4 in the country, description of, ib. together with furniture, ib. part of, with use of kitchen, description of, 5 unfinished, description of, 6 if, shall be destroyed before execution of agreement it shall still be binding, 49 mode in which, should be built should be mentioned in specification and not is agreement, 52 devise of in fee, 163 for life, ib. bequest of, to trustees upon trust to permit wife to occupy same during widowhood, 166 and after her decease or marriage to form part of personal estate, ib. bequest of, to them as tenants in common, 169 trust to repair, 198 I and J. JEWELS. bequest of, to wife for life, 169 and then to daughters, ib. trusts of, as heir looms, 222 ILLEGITIMATE. devise of real estate to, son in tail, 277 gift of stock to certain, children, ib. furniture to, children, by a certain woman, ib. devise of messuage to trustees upon trust for, son for life, 278 and after his decease, to such uses as he shall appoint, ib. and in default, to the issue of A B, ib. and in default of issue to testator's right heirs, ib. trust for the maintenance of child till twenty-one, and when he shall attain twenty-one, in trust for him, ib. and if he shall not attain twenty-one, then to testator's executors. ib. provision for advancement of, children, ib. trust to pay interest to, children, and after their decease, 279 to transfer their respective shares to their issue as they shall respectively direct, it and in default of direction, unto all the, children at a certain age, ib. and if any of the, children shall die without issue, ib. upon trust to pay interest of the share to the other children, ib. and after their decease to their respective children as above, 280 and if all the children die without issue, over, ib. upon same trusts in favour of, children, as are declared of monies to arise from name of, child should be mentioned, ib. how, child should be described, ib. provision for "my children" does not apply to illegitimate, ib. otherwise where the provision is for "children of the late A B." ib. whether any provision can be made for unborn, children, 281 clauses for effecting this purpose, 281, 282

## INCUMBRANCE. where reference to, in agreement should be made, 8 that purchaser shall be at the expense of discharging, 20 INDEMNITY. See Trust. agreement as to, of purchaser on defective title. 25. 26 proviso that if claim shall be prosecuted beyond 20 years, indemnity shall continue, 27 recital that AB will execute indentures on having an. 150 condition that if obligors shall indemnify obligee from all losses to be sustained in consequence of the execution, bond to be void, 150 INDENTURES. See Indemnity. recital of, of lease and release, whereby hereditaments were conveyed to trustees to sell and to apply the proceeds as testator should by will appoint, 160 of lease and release, whereby hereditaments are limited to trustees to such uses as testator should appoint, ib. whereby stock is settled in trust to pay dividends to testator during life. and after his decease upon his children as he shall appoint, 161 INFANT. recital that doubts are entertained whether he does not take some interest in premises, 114. of agreement to give bond, ib. condition that if, when of age shall execute conveyances. ib. and until conveyances, if obligee shall peaceably enjoy premises, bond to be bequest to, to be delivered at a certain time, 169 cannot execute collateral power, 272 INJUNCTION, reference not to dissolve, 79 but power to arbitrator to dissolve it, ib. INSURÂNCE. agreement for, of buildings, 10 where such an agreement should be inserted, 10 agreement for, of lives should be inserted in agreement for purchase of lifeagreement that grantor of annuity shall covenant to effect an, on his life, 38 and also to effect an, on the premises, 38 memorandum of, not liable to duty, 108 recital of policy of, 158 bequest of monies assured by policy of, 184 power to trustees to effect an, 321 INTEREST. as to breach of payment of, secured by bond, 129 interest is payable only from a year after testator's death, 171, 173 INVEST, monies, trust to, 208, 258 INVENTORY, direction that, shall be made of chattels, and shall be signed by persons using the same, 174 that two copies shall be made of, ib. JOINT TENANTS, agreement where, are purchasers, 7 recital of seisin of, as, 72 possession of leaseholds as, ib.

# JOINT TENANTS. where obligees are, 109 where the expression " not as joint tenants" is unnecessary, 165 JOINTURE. power to, 331 and appoint premises for a term of years for further securing, 332 pounds for. 333 proviso that premises shall only be liable to the payment of proviso that no, shall take effect until person charging it shall come into possession, 334 K. KITCHEN, agreement for the use of, 5 T. LAND. description of piece of, 89 LEASE. agreements for, of two sorts, 40 instead of formal devise should never be relied on, ib. where a landlord may distrain under, ib. doubt as to propriety of agreements for, ib. provision in agreement for, 40-59 agreement to grant, 41 agreement for, cannot be assigned, ib. as to proper stamp on, 104 covenant that when lessee shall have built a house, lessor will grant, 41 certain works shall be finished, lessor will grant, 42 of tithes is implied to be whilst lessor remains parson, 43 that in indenture of, shall be contained certain covenants and provisions by the lessee, 45-51 power to, for 21 years, 324 for three lives, 326 to grant building, 326 to trustees to lease freeholds or leaseholds until they are sold, 328 LEASEHOLDS. for lives or life, description of, agreement to sell, 12 that vendor shall assign, 13 and will procure lessor's assent thereto, ib. for exchange of, 69-71 bequest of, for lives, to trustees, 205 upon trust to pay the rents and perform the covenants, 205 to endeavour to effect renewals, ib.

and insure the lives of the cestuis que vie, 206 and apply money in effecting a renewal, ib.

and pay surplus to persons entitled to the premises, ib.

```
LEASEHOLDS—continued.
          or out of rent or by mortgage, raise sufficient to renew, 206
          and apply the money in effecting renewals, ib.
          surrender and accept fresh leases of, 207
          and stand possessed of premises, ib.
               upon same trusts as freeholds, ib.
          provision that, shall not vest for the purpose of transmission until twenty-one.
             207, 218
LEGACY AND LEGACIES. See DEBTS.
     recital of bequest of, 146
             that there are sufficient assets for payment of, ib.
     condition that if personal estate shall prove insufficient to discharge debts and
        legacies, ib.
               and legatee shall refund his proper proportion, ib.
               and shall indemnify executor from all demands, bond to be void, ib.
     charge of, on real estates, 162, 171
                when proper, 162
                in case of deficiency of personalty, ib.
     power to raise in case of deficiency of personalty, ib.
     bequest of, payable by instalments, 167
                to one, if he shall attain a certain age, ib.
                specific, ib.
                        direction as to, ib.
     bequest of various, 170
     as to currency in which, are paid, ib.
     direction that, shall carry interest, 171
     necessity of this clause, ib.
     direction that, shall be vested on decease of testator, ib.
     when it should be inserted, ib.
                    on attaining a certain age, or marriage, ib.
     direction that, shall not lapse, 172
                                    should be clearly expressed, ib.
     declaration that, is given on the condition that legatee shall release a certain
     direction that, shall be paid directly after decease, 173
                    legacies to certain persons shall be first satisfied, ib.
                    shall not be taken in lieu of debt, ib.
                    shall be in addition to advancement and portions, ib.
                    there shall be no deduction in, on account of legacy duty, 175
     duty the same when charged on personal as real estate, ib.
trust to pay, generally, 195
LEGAL ESTATE,
     agreement that vendor shall not be required to get in, 23
LESSEE.
     agreement that, may hold premises until notice to quit, 44
                      shall leave premises in good condition, ib.
                     and replace crockery, ib.
     that in lease, shall enter into certain covenants, 45-51
LESSOR,
     agreement that he shall pay taxes, 44
     and keep premises in repair, 45
     replace furniture, ib.
     that, shall only produce lease to himself, 50
     that, shall covenant to produce deeds. ib.
```

LESSOR—continued. that. shall endeavour to procure renewal, 50 assent of, where it must be procured, 13 LET. agreement to, and take, 41 LETTERS. as to proper stamps to be affixed to, 100, 103 LICENSE. See Assignment, Bankruptcy, Bequest. LIFE, or LIVES. estate for. description of, 6 agreement to sell, 11 that vendor shall convey, 12 that death of vendor or nominees shall not avoid the contract. ib. LIQUIDATED DAMAGES. provision whereby each party binds himself in the sum of pounds by way of, 29 agreement by one party on breach of agreement to pay sum by way of, ib. as to construction of agreements for, ib. LORD. agreement to procure his assent to partition, 75 M. MAINTENANCE. See ILLEGITIMATE, TRADE. provision for the, of children out of the rents, 237 pounds shall be paid to sons or daughters for, until twelve, direction that pounds after twelve till twenty-one, from real or personal estate, 240 and provision for the, of children, out of personal estate, 251 (very short) 254 out of the interest of their shares. 255 of single child, 256 other provisions for, 257 MARRIAGE, recital that, is about to be solemnized, 126, 127 and that obligor (husband) has agreed to make a settlement, 126 condition that if wife or issue shall be living at the death of obligor, his executors shall pay obligees the sum of pounds, to be applied upon trusts of marriage settlement, ib. recital that obligor (father) has agreed to secure the sum of pounds, 127 condition that if, shall not take effect, or if, shall take effect, and the sum of pounds shall be paid to obligees, bond to be void, 127 MARRIED WOMEN. trust to pay rents and profits of real or leasehold estates to, 198, 231 receipt clause, 231 where there are more persons than one, 198 trust to pay rents to separate use of, by reference to former trust, ib. to pay dividends of sum to, or to such person as she should appoint, 209 trust for the benefit of, as she shall appoint, but not by anticipation, 212 MINES.

trust to work, 202

with full powers, ib.

MOIETY. of lands. devise of, in fee, 166 MONEY. bond for the payment of, 128-131 condition that if obligor shall pay the sum of , bond to be void, 128 where there are two or more obligors, 128 n. obligees, ib. where the sum is payable by instalments, ib. on notice, 129 condition for securing the payment of, by half-yearly instalments. ib. and interest, 130 sums of, should be excepted, in general bequest of goods, 167 bequest of particular sums of, to arise from particular funds to trustees, 184 trust to convert sum into, 217 powers to raise a sum of, 339, 340 MORTGAGE. See Copyholds. agreement that purchaser shall secure the rest of the purchase money by a, 19 to execute, 30 to contain all usual agreements, ib. and power of sale, 31 and clauses for repairing and insurance, ib. condition that if obligor shall pay, money, and interest, bond shall be void, 120 devise of trust and, estates, 353 MOURNING.

## N.

## NAME,

agreement for privilege of putting, on door, 5 provision for taking certain, 344 request that the husband of daughters will take particular, 174 where it is intended to enforce the request, ib.

NEICE. See Children.

NEPHEW. See CHILDREN.

bequest of sum for, 168

NEXT PRESENTATION. See Advowson.

quære whether assignment of, should not run in the form of an agreement, 97 bequest of, 165

NUNCUPATIVE,

will, 362

formalities requisite to, ib.

0.

### OBLIGORS.

where there are more than two, words giving a power to sue two only should be introduced, 110

P.

```
PARCELS.
     description of.
          house in town, 4
          house in the country, and grounds, ib.
          together with furniture, ib.
          part of a house with use of kitchen and yard, 5
          and the privilege of fixing a bell, ib.
                              putting name on door, ib.
          farm, ib.
          piece of land, ib.
          with use of court, ib.
          tithes, ib.
          glebe lands, ib.
          unfinished house, 6
          shop, ib.
          timber growing, ib.
          timber marked for sale, ib.
          and liberty to cut and carry it away, ib.
          lifeholds, ib.
          leaseholds for lives or life, ib.
     how they should be described in agreements, 4
     that vendor shall not be required to identify, 23
     that description of, shall be taken to be correct, and no abatement shall be
       made, 24
PARTIES
     to agreements,
          between two, 1, 2
                   husband, wife, and another, 2
                  AB by attorney and CD, ib.
                   AB, CD, and surety, ib.
                  three, ib.
                  trustees and another person, ib.
     characters of, should be shortly described in agreements, ib.
     agreement that necessary, shall execute conveyance, 8
PARTITION.
     clauses in agreement for, 72-77
     recital of agreement for, 72
     that one party shall take certain premises, and another certain others, ib.
     when equality money shall be settled parties will carry, into effect, 75
     expenses of, how to be borne, ib.
     agreement that, shall be made by commissioners, 76
     parties to draw lots for the privilege of first choice, ib.
power to make, 317—320 PARTNERS,
     provision that the introduction of new, shall not affect the security, 143
PARTNERSHIP. See TRADE.
     power to trustees to dissolve, and to enter into a new one, 308
PENALTY,
     courts of equity relieve against, 29
```

```
PENALTY—continued
     construction of courts of law as to stipulations by way of, 29
PERSONAL ESTATE. See Trusts.
     bequest of the whole of, 167
PHAETON.
     bequest of, 169
PLATÉ.
     bequest of, to one for life, 169
     and after her decease to three sons as tenants in common, ib.
     trusts of, as heir looms, 220, 221
     provisions for repairing, exchanging, and altering, 221
PORTION,
     declaration that legacies shall be in addition to, 173
     trust to raise, for younger children, 234, 235
     proviso for double, to eldest son, 260
     declaration that sum, shall be in satisfaction of, provided by settlement, 270
     power to charge with, 332
          and secure the same by a term of years, 333
     proviso that premises shall only be liable to the payment of
                                                                       pounds for, ib.
                 no charge of, shall take effect until person making it shall come
        into possession, 334
POST OBIT.
     recital of contract for purchase of, 147
              payment of consideration for, ib.
               agreement for, bond, ib.
     condition that if obligee should be living at the decease of his uncle, and should
       pay the sum advanced, ib.
     or should die in the lifetime of obligor, bond shall be void, ib.
POWER. See TRADE.
    that, of distress on lands of lessee shall be contained in lease of tithes, 51
     to be contained in lease, for lessee to erect mews, 53
          given to architect to reject materials, 64
     and to require alterations to be made by builders, ib.
     to raise sufficient out of real estate to pay debts and legacies, 162
     of distress for annuity, 176. 186
                            not absolutely necessary, 177
     for, entry ib.
     exercise of, by will, over real or personal estate, 182
          that, subject to life estate, ib.
         lands shall be to the use of, &c. ib.
         monies shall be upon trust, ib.
         if testatatrix shall die, 183
         trustees shall stand seised to certain uses, ib.
         charge of sums to be given by codicil, ib.
    to do all acts necessary for working mines, 202
    to mortgage premises to carry on the work, ib.
     to daughter to appoint the interest of her share to her husband, 263
    to trustees to dissolve partnership, 308
    used in settlement easily adapted to wills, 315
    to be inserted in settlement, 350, 351
    to trustees at the request of any person entitled to rents, and during minority at
       their discretion, 317
     to make partition, ib.
       sell and exchange, 317
```

```
POWER—continued.
     to revoke the existing uses and limit the new uses, 318
     and to give receipts, ib.
     application of monies to arise from sale, 319
     to discharge incumbrances, ib.
     and invest residue in the purchase of lands, ib.
                                                to be settled to the same uses. ib.
                                                invest monies until purchase is effected,
                                                and pay the interest to persons entitled
                                                  to the rents and profits, ib.
     to trustees to repair, rebuild, and effect insurance, 321
       enfranchise copyholds, 322
       give receipts for consideration money, ib.
       lease for twenty-one years, 324
                three lives, 325
        grant building leases, 326
       lease freeholds or leaseholds until they are sold, 328
       trustees if it shall be desired by persons entitled to rents, to sell real estate, 329
     invest and vary and stand possessed of sums upon certain trusts, ib.
     direction that trustees should receive rents until premises are sold for the benefit
       of person entitled to interest, 330
     to A B to cut timber to a certain amount, ib.
        A B, &c. to charge premises with jointure with usual powers for securing it, 331
     and appoint premises for a term of years for further securing jointure, 332
     to charge with portions for younger children, ib.
     if but one the sum of
                                   pounds, if two the sum of
                                                                     pounds, if three
       or more the sum of
                                  pounds, ib.
     and secure the same by a term of years, 333
     proviso that premises shall only be liable to the payment of
                                                                           pounds for
                    jointure, and
                                        pounds for portions, ib.
                 no jointure shall take effect until person making it shall come into
                    possession, 334
                 no charge of portions shall take effect until person making it shall
                    come into possession, ib.
     to grant life estate or rent charge to husband, 335
       trustees during minority to appoint stewards, 336
                to advance a sum of money to any of testator's sons to engage in
                    trade, 337
                if son in law shall need a sum of money to advance it out of the
                   portion bequeathed to his wife, 338
                                                                   pounds as she shall
                by appointment of AB to raise the sum of
                   think proper, 339
                such sum not to be raised in case of second marriage, ib.
                to raise the sum of
                                          pounds for AB, 340
                                                     daughter or any other woman, ib.
     to change trustees, 341
          the trust premises to be conveyed to the new trustees with the like powers,
            342
          trustees to, chargeable only for the monies they receive, ib.
          direction that trustees shall only be responsible for their own acts, ib.
          and that trustees shall retain costs, 343
PRESERVATION
     of property in testator's family, how it may be done, 226
```

```
PRINCIPALS. See FACTOR.
     recital that they carry on trade, 87
     books to be open to inspection of, 90
     covenant by. 91
          to consign goods at their own costs, ib.
                         pounds per cent. commission, ib.
                  all expenses incurred. ib.
          not to appoint another factor, ib.
PROPERTY.
     what passes by the word, 181
     where it is improperly used, ib.
PROVISO. See Condition. Declaration. Trade.
     that if claim shall be prosecuted beyond 20 years, indemnity shall continue, 27
          agreement shall not be construed into a mortgage, 28
          if purchaser shall pay residue of purchase money by three half-yearly in-
            stalments, vendor will make over the premises to purchaser, 32
          if defect shall be remedied, agreement shall be void, 29
          purchaser may enter upon and enjoy premises until default is made in pur-
            chase money, 35
     to be contained in lease.
          for suspension of rent in case of fire, 47
             insurance, ib.
             entry by lessor to give notice to repair, 48
             re-entry on premises on non-payment of rent, ib.
             making void lease on non-payment of rent, ib.
              the term being made determinable at seven or fourteen years, ib.
     for the termination of agreement between principal and factor, 93
                                   pounds shall be recoverable on bond, 137
     that no larger sum than
     restricting liability of surety, 141
     that the introduction of new partners shall not affect bond, 143
     that personal estate shall be the primary, rents and profits the next, and the
       sale of lands the last, fund for the payment of debts and legacies, 164
     that if annuitant shall alien annuity, or become bankrupt, annuity shall
       cease, 177
     for cesser of term, 201, 239
     that sons and sons-in-law shall be appointed to a living, at any time, 204
     that premises shall not vest for the purpose of transmission until twenty-one, 207
     for repairing furniture and plate, 221
        exchanging,
        altering
                                      222
     for the survivorship and accruer of shares, 236
            maintenance of children out of the rents, 237, 252, 254
            advancement of children out of the rents, 238, 252, 254
     that remainder man shall receive the rents subject to the term, 238
     that an offer shall be made to eldest son when premises are sold, 243
     for the maintenance of single child, 256
            advancement
     that till a sufficient part of the trust monies are invested, trustees shall pay wife's
       annuity, and children's maintenance out of sums in their hands, 257
     for double portion to eldest son, 260
     that if any daughter shall marry without consent, trustees shall stand possessed
       of her portion upon certain trusts, 261, 262
     what will satisfy this proviso, 261
     requisites of this clause to be effective, ib.
```

```
PROVISO-continued.
     that if any child shall marry and die in testator's lifetime, leaving issue, such
       issue shall have child's share, 264
          if children shall not take, their shares shall go to their issue, 271
          if any sons shall die before they attain twenty-five, their shares in the trus
       monies shall be in trust for their issue, 272
          share of daughter's shall be to their separate use, 273
     and after their decease, their shares to go to their issue as they shall appoint 274
     in default, to all equally, ib.
that every person taking under the limitations hereinbefore mentioned, and the
       husbands of such as are females, shall take and bear a certain name and
       arms, 344—346
     for shifting an estate on the accession of another estate. 347
PUBLICATION. See Author, Publisher, &c.
     of a will, is not necessary, 160, 358
PUBLISHER,
     shall pay purchase money, 82 and all expenses of publication, ib.
     allow
               copies to author, ib.
     will exert himself for sale of work, ib.
     to pay sum of pounds, for second edition, 83 if author shall refuse to edit, may choose another person, ib.
     profits to be divided between author and, ib.
     that, shall publish work by commission, 84
     to indemnify author from all loss, ib.
     may pay expenses out of proceeds, ib.
     recital that, has published a certain work, ib.
     and demand for a new edition, ib.
     to pay remuneration to editor, 85
                           where the same is payable by one instalment, ib. n.
     recital that, is desirous of having a translation of a work, 86
     will pay consideration money for engravings 87
PURCHŠE,
     of property, See AGREEMENTS.
          proviso that an offer shall be made to eldest son to, premises when they
             are sold, 243
PURCHASE MONEY.
     covenant by purchaser to pay, 4
      agreement that on surrender of copyholds, purchaser will pay, 11
      covenant to pay, by instalments, 15
      if, is not paid on a certain day, purchaser shall pay interest for it, 18
      provision that purchaser shall pay part of, and secure the rest by a mortgage, 19
                     if purchaser shall pay residue of, by three half-yearly instalment,
        vendor will make over the premises, 32
      covenant to pay residue of, 36
           if default shall be made in payment of, vendor may enter, ib.
      power to take security for, of trade, 290
 PURCHASER. See Purchase Money, Title.
      to have possession on particular day, without prejudice to any objection to the
      that, shall have the deeds and covenant to produce them, 20
                 be at the expense of discharging incumbrances, ib. n.
      to pay share of expenses of inclosure act, ib.
      special agreements as to what expenses he shall bear, 22
```

t

Q. QUIET ENJOYMENT, bond to secure, of lands, 111 R., RATES. vendor to pay, to given day, 10 REBUILD. power to trustees to, 321 RECEIPT. the, of married women to be a good discharge, 210 of daughters to be a good discharge, 273 power to give valid, 318 RECITALS. See Agreements, Bonds, Wills. when they may be dispensed with in agreements, 2 that vendor has contracted for purchase of lands, 3 that vendor carries on trade, 14 where clause making, in deeds thirty years old should be introduced, 21 clause for making, in deeds thirty years old, evidence, 22 that title is defective, 24 purchaser should take possession, 25 certain title-deeds are missing, ib. of agreement to transfer part of purchase money into name of trustees, ib. that only a twenty-eight years title can be made to certain close, 26 of agreement that purchaser should be indemnified, ib. loan of money, 30 deposit of title-deeds, ib. contract for purchase, and agreement that part of purchase money should be paid immediately, and that the residue should be secured as hereafter mentioned, 31 that lessor contracted to build a house, 40 of agreement for lessee to finish it, 41 indentures of lease and release, whereby premises are conveyed, to persons in fee. 59 agreement to erect buildings immediately, 60 that owners have appointed architect, ib. who has prepared plans, ib. of agreement to build, ib. exchange, 69 seisin of joint tenants, &c. 72 agreement to effect partition, ib. that differences exist, 77 of contract for purchase, 81 in agreement between publisher and author, &c. 81, 83, 84, 86 principal and factor, 87 of agreement to give bond to remedy defective title, 111 passim. as to necessity of, in wills, 158 RECOVERY. expenses of, to be borne by vendor, 9, 11

```
REFEREE. See COMMISSIONER.
REFERENCE.
     agreement to make, a rule of court. 78
     not to dissolve injunction, 79
RELEASE.
     direction that legacy is given on condition that legatee shall, certain estate, 172
                  daughters shall execute. ib.
     and if they shall refuse, then their interest under the will shall cease. ib.
     where a condition precedent, 173
RENT.
     agreement as to arrears of, 9
               by purchaser to pay, 13
     bequest of arrear of, 170
     declaration that, subject to term remainder man shall receive the rents. 200, 239
RENT-CHARGE. See Annuity.
     power to grant, to husband, 335
REPAIR,
power to trustees to, 321 RE-PURCHASE,
     provision for, 38
                 of annuity, ib.
REMAINDER. See REVERSION.
     recital that testator is entitled to a manor in, under a will, 161
RESERVATION
     in agreement for lease, 42
     of a peppercorn, 43 n.
RESIDUE. See Trusts, Trade.
     trust to pay, to wife, 209
     devise and bequest of, of real and personal estate to trustees, 352
     devise of, of real estate to AB in fee, ib.
              estates which shall lapse and become void, 352
     what devise of, includes, 352, 353
     declaration of trusts of, 353
         bequest of, of personal estate to trustees, ib.
                    of personal estate, ib.
     trust to pay over, to wife ib.
    if no person shall be entitled, trust monies to sink into, ib.
REVERSION.
     when the agreement is for the purchase of, 7 n. (c) 8 n. (a)
     clauses in partition of, 72-77
     estates in, will pass under a general devise, 179
REVOCATION
    of former wills, 157
```

S.

SALE,
of property. See Agreements.
power of, and exchange, 317
to trustees with consent of persons entitled to rents, 329

SEALING
is not necessary to a will, 357

```
SECRET.
     bond not to divulge, 141
SEPARATE USE. See MARRIED WOMEN, CHILDREN.
SERVANTS.
     bequest of legacy to, 168
SHEETS. See AUTHOR.
     work to consist of
SHOP,
     description of, 6
SIGNATURE
     of will for real estate, 357
               personal estate. ib.
     usual form of what, ib.
     will of personal estate will be valid without. ib.
     need not take place in the presence of witnesses, 358
     of a codicil, 360
SISTERS.
     of testator, provisions for the benefit of. 275. 276.
SOLICITOR. See AGENT.
     conveyance to be approved by, of each party, 9
     each party to pay fee of his, ib.
power to trustees to advance a sum of money to, 338 STAMPS,
SON-IN-LAW.
                  See Advowson.
     to be impressed on agreements, 100
          where the agreement is contained in letters, ib.
     exemptions from,
          memorandums of insurance, ib.
          agreement for lease under five pounds, ib.
                              hire of servant, ib.
               what is within, 104
                        for goods, 100
               what is within, 104
          agreement on voyage coastwise, 100
          letters between merchants fifty miles apart, 101
               what is within, 106
     agreements under seal are deeds, and must be stamped accordingly, 101
     how instrument is to be counted as regards, ib.
     agreement in the first person liable to, ib.
     unsigned paper need not have, ib.
     where only one, and where more than one are necessary, 101, 102
     what is the proper, where one agreement incorporates another, 102
                 where an agreement has the operation of another instrument,
     receipts may be given in evidence without having the, of an agreement, ib.
     what is the proper, where the deed contains a collateral agreement, ib.
     where subject-matter of agreement will be reckoned to be under twenty pounds,
     proper, when the agreement is executed at sea and in foreign countries, ib.
     as to the proper, to be affixed to letters, ib.
     where agreement to pay will be held to be a promissory note, and liable to, 104
     on memorandum on deposit of deeds, ib.
        verbal agreement to hold, ib.
        defeazance, ib.
```

```
STAMPS—continued.
    on cognovit, 104
       agreement for lease, ib.
    where agreement is evidence of only part of contract, ib.
     as to proper, on agreements for the making of goods, 105
                                        sale of goods not in existence, 106
          what alteration in agreement will require a fresh, ib.
     on bonds, 155
        bond to pay rent, ib.
     as to the necessity of several, on bond, where there are several interests, ib.
     where additions have been made in bond after execution, what is the proper, it.
     what is the proper, where collateral agreement is contained in, ib.
                        on bond for securing any sums which may be advanced ib.
                        where bond is contained in another instrument. ib.
     where bond is signed abroad, 156
                 relates to a friendly society, ib.
STEWARDS.
     trust to pay wages to, 198
     power to trustees during minority to appoint, 336
STOCK
     condition that if obligor shall transfer, to trustees within twelve months, 132
               and pay interest till the same is transferred, ib.
               bond shall be void, ib.
     recital that testator is entitled to reversionary interest in, 159
     bequest of sum of, to trustees, 184
SUBJECT,
     to a sum of
                         pounds, 210
        annuity, ib.
       life-interest, ib.
        bequests, ib.
SUIT.
     agreement to dismiss, 97
SURETY,
     commencement of agreement by, 2
                         bond where there is a, 110
                                     the responsibility is limited, ib.
     recital that, hath agreed to join their, 128, 144
            of agreement to become, 140
     provision restricting liability of, 141
SURVIVORSHIP,
     provision for the, of children's shares, 237, 250
                      in favour of children and their children, 263
     provision for the, of shares of trade, 303, 312
                                         Т.
```

TAXES,
trust to pay, 197
TENANTS IN COMMON. See WILLS
where they are purchasers, 7 n, (b)
recital of seisin of, as, 72
possession of leaseholds as, ib.
where obligees are, 109

```
TENANTS IN COMMON—continued.
     devise to two, as, 165
     beguest of plate to three as, 169
                house to three as. ib.
     to the use of all the children as, 187
TERM OF YEARS.
                         See Uses, Trusts, Declaration.
     expenses of assignment of, not already assigned, to be borne by vendor, 9
                 assigning particular, to be borne by purchaser, 22
TIMBER.
     growing, description of, 6
     agreement for sale of growing underwood must be in writing, ib.
     marked for sale, description of, ib.
     with liberty to carry, away, ib.
     agreement where, is sold separately from estate, 7 n. (f)
     to be valued by arbitrators, 15
     purchaser not to pay more than a stipulated sum for, 16
     trusts of term to cut, 199
                           and sell the same, ib.
                               apply the monies upon trusts, ib.
     power to cut, to a certain amount, 330
TIME.
     agreement that it shall be the essence of the contract, 18
     may be made the essence of the contract, ib.
TITHE'S.
     description of, 5
TITLE,
     vendor not to produce remote, to certain piece of land, 21
     that no evidence of shall be required anterior to a certain will, ib.
     clauses providing for defects in, or for precluding inquiries as to, where they
       should be inserted, ib.
     agreement that no evidence of, shall be given where there are recitals in deeds
       thirty years old, 22.
     that expenses of evidences of, shall be borne by purchaser, ib.
          of lands given in exchange shall not be required, 23
     of lands received in exchange not to be required, ib.
     that, shall not be required anterior to inclosure act, ib.
     when, to part only of the premises is defective, 24
     covenants for, of leaseholds, 33-36
     lessor not to be required to show his, 49
           to produce his, ib.
     vendor cannot enforce specific performance of agreement for lease, without pro-
       ducing his ib.
     when purchaser cannot insist on production of vendor's, ib.
     that lessor shall only be obliged to produce lease to himself, 50
     bonds, where, is defective, 111, 112
     covenant for, inserted in bond on purchase of copyholds, 116-118
         should if possible be inserted in surrender, 116
TITLE DEEDS.
     agreement that vendor shall retain, 19, 23
     and covenant to produce, ib.
     and deliver attested copies of, 20
     that purchaser shall have, and shall covenant to produce, ib.
     recital that, are missing, 25
     covenant by vendor to use every exertion to procure, ib.
```

TITLE DEEDS-continued.

```
recital of deposit of, 30
     agreement to deliver, 39
     on partition that, relating to any one part should be delivered to the party est-
        tled thereto, and all other, to a third person who shall covenant to profes
        them. 74
TRADE,
     recital that vendor carries on. 14
                                    in co-partnership, 159
     covenant not to set up the same within
                                                     miles of
                                                                     15
              such an agreement not illegal, ib.
     desire to have, carried on, 159
     recital of assignment of, 119
     condition that if obligor shall not carry on the, of a
                                                                     within
                                                                                miles or
                   vears, ib.
          nor solicit custom, ib.
          nor induce his customers to deal with obligee, bond to be void, ib.
     provisions relating to the, of the testator, 283
          devise and bequest of, and messuages connected therewith upon certain
          upon trust to conduct the business until eldest son attain a certain age, and
             if he die before that age or decline business, until second son shall attain
             the age. ib.
          and if second son shall die or decline to sell, 284
          and stand possessed of proceeds of sale in trust for testator's executor, it
          but if either son shall attain twenty-one years, then to convey the trade, to
             to such son, ib.
          proviso that eldest son shall give security to admit second son to a joint
             share in concern. 286
          upon trust to carry on until youngest son attain twenty-one years, or if he
             die under that age, until second son attain twenty-one, ib.
          declaration of the trusts of trade, warehouse, and profits, 286
          powers to trustees to manage trade, 286
               enter into contracts, ib.
               increase or diminish business, ib.

    make purchases, ib.

               adjust and compromise debts, 287
               sell premises, ib.
               hire clerks and workmen, ib.
               do all other matters, ib.
           that expenses shall be paid out of profits, &c. and next out of person
             estate, ib.
          direction that sons shall be employed in business and instructed them.
             and receive reasonable salary, 288
          direction to trustees to assign business to son on attaining twenty of
             years, if he shall give security to assign portions to other children, 289
     provision for the sale of testator's business to his son, ib.
          that son shall pay nothing for good-will, 290
          power to take security for the purchase money, ib.
                             and to alter securities, 291
          sons not to be compelled to pay more than a certain sum by the year, it.
          declaration that trustees shall stand possessed of testator's share in, and
             effects, 292
          as to monies, upon trusts declared of residue, ib.
```

TRADE—continued. as to share in partnership, stock, and leasehold premises, ib. if eldest son shall engage in, ib. in trust for eldest son, ib. if eldest son shall not attain twenty-one years, or shall refuse to carry on business, ib. and second son shall be willing, ib. in trust for second son, 293 if neither shall attain twenty-one years or will carry on business, 293 in trust for third son, ib. and if all shall die or refuse, ib. or the trade shall be discontinued, ib. upon trust to sell the same, ib. and stand possessed of the proceeds upon trusts declared of residue, ib. declaration that on attaining twenty-one years, eldest son shall be admitted a partner, and be entitled to one-fourth of profits, 294 similar declaration as to second son. ib. direction that sons shall notify their election by writing to trustees to become partners, 294 if sons be incompetent or improper persons, power to trustees to dissolve the partnership as far as respects such sons, ib. and the sons shall cease to be partners, and shall be entitled to provision given to sons who refuse to engage in trade, 295 direction that if sons shall refuse to engage in trade, they shall have the pounds out of the capital thereof, and a share of the accumulated interest, but no further, ib. declaration that if any son shall not engage in business, other sons shall be entitled to his share, ib. and if but one son shall carry on trade, the whole business shall go to the one son, he paying interest and certain sums to his brothers, 296 direction as to title of firm, 297 and if all the sons shall refuse upon the terms mentioned, ib. direction that every son shall have one-sixteenth thereof until they shall attain twenty-eight, or be married or die, ib. similar benefit to son on his withdrawal from the partnership, ib. provision that no son declining to engage in the business shall carry on the same trade within the bills of mortality, and if he shall do so, his sixteenth shall cease, ib. direction that each of the sons engaging in business or attaining twentythree, or marriage, shall be entitled to the sum of pounds, 298 and sons not engaging in business, shall be entitled to an additional pounds on attaining twenty-five, ib. provison that when all the sons who shall engage in business shall have attained the age of twenty-eight years, trustees to make accounts, ib. and after paying the before-mentioned sums to sons, raise the sum of pounds, and invest the same, 299 and stand possessed thereof upon trust hereinafter mentioned, ib. and after all the sums have been paid upon trust, to divide the residue into double the number of sons, who shall have engaged in business and attained the age of twenty-eight years, or who shall die before, leaving widows and children, or children alone, ib.

and if all such sons attain twenty-eight, 300

and if only one shall engage in, then the whole to that one, ib.

in trust for all of them equally, ib.

TRADE-continued. provision for the widows of son engaging in trade out of one share of themsidue. ib. and the other of the shares to be divided amongst the other sons, 301 the share of widow and children to be paid to trustees, upon trust to mvest. ib. and stand possessed thereof upon the same trusts as are declared of the sm of pounds, ib. and if there shall be no such son who shall attain twenty-eight years, or have a widow or children, ib. then the residue shall be, 302 in trust for children of daughter of testator who have attained twenty-as years, to take per capita and not per stirpes. ib. and if there shall be no children, ib. in trust for nephews and nieces of testator, 302 declaration that trustees shall stand possessed of the sum of pounds, il. upon trust for all testator's sons for life, ib. and after their decease, sons share to be in trust for their widows until the voungest child shall attain twenty-one years, ib. and then equally between all the children and widow, ib. and if such son shall leave no widow but shall leave children, then in trust for the children equally, their shares to be vested at twenty-one, 20 proviso for survivorship and accruer, of shares, ib. and if all the children shall die under twenty-one years save one, the whole of the parents share to go to that one, ib. direction that after the decease of sons, the interest of their shares subject to the provisions made for the widows, shall be applied to the maintenance and education of the children, and the residue to accumulate for the benefit of persons entitled to the fund, ib. if sons shall leave widow and no children, 304 in trust as to son's share for widow during her life and widowhood, ib and then to be divided between testator's sons, upon the same trusts z are declared of their original shares, ib and if no son shall have any children, 305 upon trust for all testator's daughters, ib. and if no daughter shall have any children, upon trust, ib provision that in case any other son shall be born, he shall be entitled to pounds, and an equal share of the the sum of if any of testator's present sons shall refuse to engage in trade, any after born son may be admitted in the place of such son as shall so refuse, and his share shall be in lieu of the legacies left him, 306 if any son shall die before twenty-eight, leaving a widow, the account and valuation shall be taken immediately, ib. if all testator's sons shall decline to engage in the, shall be sold, 307 and after such sale, trustees shall invest the same, ib. power of trustees to dissolve partnership, and enter into a new one, 308 accept security from the testator's partners in trade for the payment of the value of his share, 309 not to call in money so secured until other funds are exhaus-

trusts of profits, 310

upon same trusts as residue, ib.

ed, ib.

trust to pay annuity to wife out of profits of trade, and proportional part

ı

ť

```
TRADE—continued.
            from the last time of payment, and her death or relinquishment of busi-
            ness, 310
          trust to invest the profits (subject to the purposes aforesaid) in order that
            they may accumulate, 311
          and alter the securities thereof. ib.
          direction that profits of trade shall first be liable to
                                                                     per cent. on the
            amount of the capital stock, which shall go to pay wife's annuity and main-
            tenance of children, ib.
          and subject thereto to be invested and accumulated. ib.
          and divided in as many shares as testator's children, each of whom shall be
            entitled to a share, 312
          one moiety payable at twenty-one, and the other at twenty-five. ib.
          declaration that residue shall be employed in carrying on business, ib.
          provision for survivorship or accruer of shares. ib.
          trustees to take an account of the stock, 314
          and continue the same yearly. ib.
          power to trustees to advance a sum of money to any of testator's sons to
             engage in, 337
TRANSLATION
     of a work, agreement for, 86
TRUSTS. See TRADE.
     declaration of, of purchase money for security of purchaser, 25
                       part of the purchase money, ib.
                                                     to keep purchaser indemnified
                                                       against all claims on account of
                                                       defect, for twenty years, 26
          if purchaser shall sustain damage to repay purchase money to him, 27
          and, subject to, pay interest to vendor, ib.
          if no claim shall be made, transfer same to vendor, ib.
             loss shall be sustained, indemnify purchaser, ib.
     to the same, as are declared of freeholds, 181
     commencement of declaration of, of real estate, 192
                                                and personal estate, ib.
                                        term, ib.
     declaration that monies to arise from sales shall be upon same, as residuary
        estate. ib.
     commencement of declaration of, of personalty or the proceeds of sale of lands,
                                              &c. 193
                                            personal estate, ib.
                                            residue of personalty, ib.
                                            monies arising from sale of personal estate, ib.
                                                               rents, ib.
     declaration of, of term to be inserted in settlement, 193
     to raise sufficient to pay debts out of real estate, 194
          although personal estate is not got in, ib.
          and apply the money in payment of debts, ib.
     to pay debts and legacies generally, 195
            all expenses incurred in execution of trusts, ib.
     upon same, as residue, ib.
                     monies to arise from sale, ib.
                    are declared of freeholds, ib.
     for securing annuity, ib.
     to sell real estate, 196
     for A B for life, 197
                                                                           F F
   VOL. 11.
```

```
TRUSTS .- continued
    and after his decease, as to those premises, and after my decease as to all the
       others, 197
    to pay rents to AB for life, ib.
    and after his decease to stand seised of premises for his first and other sons in tail, it.
    for the benefit of the first son of A B who shall attain twenty-one. ib.
    to convey and settle premises to certain uses. ib.
       pay taxes, &c. ib.
       repair house, 198
       pay wages to stewards, &c. ib.
            rents and profits of leasehold estate to married women, ib.
          variation for any other person, 198 n.
                      more than one, ib.
     for separate use of women by reference to former trust, 198
     of term to authorise trustees to cut timber, 199
       and sell the same, ib.
       and apply the monies in paying charges on the estates, ib.
       and residue upon same, as are declared of residue. ib.
     to pay annuity to AB ib.
     of term of years for further securing annuity. 200
    to work mines, and sell the produce, 202
    and stand possessed of profits upon certain, ib.
    of advowson in favour of sons and sons-in-law, 203, 204
       leaseholds, and trusts thereof, 205-207
    to invest monies, 208
                      and vary the securities, ib.
        invest and vary a second sum, (very short,) by reference, ib.
        convert personal estate into money, 209
        continue personalty in present investment, ib.
        pay sum or residue to wife if she shall survive testator, ib.
            dividends of sum to married women, or to such person as she should
               appoint, ib.
                               of stock to wife, if she shall continue unmarried, and if
            she shall marry, a smaller sum, 210
          and after her decease or marriage, 211
          to pay annual sum to widow during widowhood, ib.
          and if she shall marry, a smaller sum, ib.
     for the benefit of married woman as she shall appoint, but not by anticipation,
     of sum after decease of AB for such persons as AB shall by deed or will ap-
       point, and in default, 213
           when the donee is a married woman, 213 n.
     for AB as personal estate, 213
     to pay interest of sum to A B for life, and proportional part, ib.
     provision as to proportional part, necessary, ib.
     and on death of AB in trust, ib.
     for such persons as would take under the statutes of distribution, 214
     to pay interest to wife, she supporting children, ib.
                                            one child, 214 n.
     to raise a sum of money, the interest of which, when invested, will amount to
            pounds a-year, 214
     pay interest thereof to wife and raise deficiency out of other monies, ib.
     to raise a sum of money and stand possessed thereof, 215
     or pay the same to A B, ib.
```

```
TRUSTS-continued.
     to apply interest and dividends for the life of AB for his maintenance, 215
       pay annual sum to AB, ib.
     for two in equal shares, ib.
       if either die under twenty-one, as to his share, in trust for the other, 216
       if both die under twenty-one years, in trust for all the children of X Y, ib.
        but if no children, ib.
        trust monies to be as to one moiety upon trust, ib.
        as to other moiety, upon trust, ib.
     upon, as an auxiliary fund for the payment of sum or portion, ib.
     to convert sum into money, 217
     and lay out produce on real or leasehold estates. ib.
                                     in particular county, 217n.
         until purchase of estates, to pay interest to the persons entitled to the rents, 217
     this clause strictly unnecessary, ib.
          that until assignment, bankruptcy, &c. trustees shall pay interest to A B
             for his life, 219
          but if such events should occur, then over. ib.
     of furniture, plate, and jewels, 220
          as to the furniture and plate, ib.
          to permit wife to use the same. ib.
          and after her death, as heir looms, ib.
          and as to jewels, 222
          in trust to permit wife to use them, and after her decease, ib.
          upon trust as heir looms, ib.
     for the benefit of children. See CHILDREN.
                       illegitimate children. See ILLEGITIMATE.
     of profits of trade, 310-313. See TRADE.
TRUSTEES.
     commencement of agreement by, 2
     agreement when, are vendors, 7 n. (a)
      declaration that, shall stand possessed of purchase money upon certain trusts for
        security of purchaser, 25
      recital that, have agreed to enter into bond for due execution of trusts. 153
      condition that if, shall duly apply monies, bond shall be void, ib.
      devise of real estate to, upon trusts hereinaster declared, 179
      bequest of leaseholds to, ib.
      what words should be used, 180
      devise and bequest of real and personal estate to, ib.
     bequest of personal estate to, 180, 181
                 leasehold and other personal estate upon trusts hereinafter men-
        tioned, 181
      bequest of sum to,
                 various monies to arise from particular funds, to, 184
      to, to preserve contingent remainders, 186, 226
      a necessary clause in wills, 186
      general appointment to, to preserve contingent remainders, 190
              devise to, to preserve contingent remainders, 191
      direction that in settlement, proper estates shall be limited to, to preserve con-
        tingent remainders, 200
      provision that, shall take an annual account of stock, 314
      power to change, 341
      trust premises to be conveyed to new, 342
```

TRUSTS continued. to be chargeable only for the monies they receive, 342 utility of the clause, ib. receipts sufficient discharges, 355

### II and V.

VALUATION.

that purchaser shall take fixtures at a, 17

agreement to sell at a, will not be enforced when the price fixed is below the real value, ib.

VARY.

monies, trust to, 208, 258

is absolutely necessary, 208

VENDOR, See TITLE.

that, shall retain title-deeds, and covenant to produce them, 19

purchaser shall have title-deeds, and covenant to produce them to, 20

shall not produce remote title to certain piece of land, 21

shall not be called upon to identify new with old description of parcels further than by abstract, 23

agreement by, to stand possessed of premises subject to proviso, 32

UMPIRE.

provision for appointment of, 16, 77, 148 on partition, 73

USES, declaration of,

to the same, and trusts as are declared of freeholds, 181

devise of lands to, 185

how they should be devised to, ib.

to the use of trustees for a term upon certain trusts, ib. and after the expiration of the term, ib.

subject thereto, ib.

to the, of one in fee, ib. of testator's heirs, ib.

that wife shall receive an annuity in bar of dower and jointure, 186

with power of distress, ib.

of AB for life, ib.

trustees to preserve contingent remainders, ib.

and after A B's decease, 187

to the, of such children of AB as AB should appoint, ib.

where donee is a married woman, 187 n.

and in default of appointment to the, of all the children as tenants in common, with cross remainders, ib.

and in default of such issue, 188

to the, of heirs of the body of AB, ib.

AB if he shall attain twenty-one, or have issue, but if not, to CD

in fee, ib.

third and other sons in fee, but subject to same executory devise, as is expressed in respect to first and second sons, 189

daughters, &c. 189 n.

of AB in fee, but if he shall have no son who attains twenty-one, 189 after decease of A B, to his sons successively in tail male, ib.

ţ

t

1

```
USES—continued.
     and in default of issue, to second and other sons successively for life, 189
     and after their respective decease, to their sons successively in tail, ib.
     to the, of daughters as tenants in common, 190
             of trustee for ninety-nine years upon the same trusts, for the benefit
               of one daughter and her issue, as are declared in favour of another
               daughter, ib.
     as to one moiety to, ib.
     and as to other moiety to, ib.
     as to one estate to. ib.
     as to another, to, ib.
     to such, as devisee shall appoint, 191
     to the use of trustee for life, in trust for devisee, ib.
     to, to bar dower, ib.
     power to revoke existing, and limit other, 318
                                         W.
WATCH,
     bequest of, 169
WEARING APPAREL,
     bequest of, 168
WIDOW,
     provision for, of sons engaging in trade, 300 See TRADE.
WIFE. See Trusts.
     devise of house to, 165
     bequest of leasehold house to trustees to permit, to occupy during widowhood, 166
             to, of wearing apparel, 168
               jewels for life, 169
     to be allowed use of house during her life, paying certain rent, 175
     to the use that, shall receive an annuity in bar of dower and jointure, 185
     trust to pay sum or residue to, 209
                 dividends of a sum of stock to, if she shall continue unmarried, and
                    if she shall marry, a smaller sum, 210
     annual sum to widow during widowhood, 211
     and if she shall marry, a smaller sum, ib.
     provision to be in bar of dower and jointure, ib.
     if, refuse such provision, trustees to stand possessed of sum of
                                                                       pounds upon
        same trusts as if she were dead, 212
     trust to pay interest to, she supporting children, 214
             permit, to use furniture and jewels, 220
                            jewels, 222
     provision for payment of annuity of, out of monies in trustees' hands, 257
     trust to pay annuity to, out of profits of trade, 310
WILL,
     that no title shall be required anterior to, 21
     necessary formalities of, may be proved to have taken place, 358
     commencement and introductory clauses, 157
          commencement, ib.
          revocation of former wills, ib.
          desire of burial in a particular place, 157, 158
          appointment of executors, 158
```

```
WILLS-continued.
    recitals, 158
          of a policy of insurance on testator's life, ib.
          carrying on trade in copartnership, 159
          trade, ib.
          and desire to have it carried on by trustees, ib.
          that testator is entitled to a reversionary interest in stock. ib.
                       will become entitled to a sum of stock if he survive his wife, it.
                       has contracted for the purchase of premises, ib.
          of indentures of lease and release whereby certain hereditaments were con-
            veyed to trustees to sell and apply the proceeds as testator should by will
             direct. ib.
          indentures of lease and release whereby hereditaments are limited to
            trustees to such uses as testator should appoint, 160
          of indenture whereby stock is settled in trust to pay dividends to testster
            during life, and after his decease upon his children as he shall appoint, 161
          that testator is entitled to a manor in remainder under a will, ib.
     charges and directions as to payment of debts and legacies, 162
          general charge of debts and legacies on real estates, ib.
          charge of debts and legacies on real estate in case of deficiency in per-
            sonalty, ib.
          power to raise deficiency by sale on mortgage, ib.
          direction that real estate may be resorted to, before personal estate is got
            in, but that real estate shall be indemnified, ib.
          directions that executors may continue money on security, 163
                    to executors to pay such debts as shall be proved, and to settle
            all accounts, ib.
          exemption of personal estate from debts and legacies. ib.
          that particular sum shall be raised out of particular estate, 164
          proviso that personal estate shall be the primary fund, the rents and profis
            of lands during minorities the next, and the produce of the sale of part
            of the lands the ultimate fund for the payment of debts and legacies, 164
     particular devises and bequests, 165
          devise of a messuage in fee, ib.
                 to two as tenants in common in fee, ib.
                 of premises contracted to be purchased in fee, ib.
          direction that if title shall turn out bad, purchase money shall sink into
            residue. ib.
          devise of house to wife or any other person for life, ib.
                    moiety of lands in fee, 166
          bequest of leasehold house to trustees upon trust to permit wife to occupy
            the same during widowhood, ib.
          and after her decease or marriage, house to form part of personal estate, ib.
          bequest of next presentation, ib.
                     household goods to AB for life, or absolutely, ib.
                          except money, ib. n. (b)
                     the whole of personal estate, 167
                     farming stock, ib.
                     legacy payable by instalments, ib.
                     legacy to one if he shall attain a certain age, ib.
                     specific legacy, ib.
                     sum of money to charitable institution, and direction as to
                        receipt, ib.
```

to wife of her wearing apparel, &c. 168

executors, ib.

```
WILLS—continued.
          bequest of legacies to servants, 168
                            pounds for mourning, ib.
                      debt, and discharge from the same, ib.
                      plate, &c. to one for life, 169
          and after her decease to three sons as tenants in common, ib.
          bequest of watch, ib.
                      phaeton, ib.
                   to infant to be delivered at a certain time, ib.
                   of jewels to wife for life, and then to daughter, ib.
                      house to three as tenants in common, ib.
                      books, ib.
                      arrear of rent, 170
                      various legacies, ib.
     directions as to legacies, 171
          charge of legacies on real estate, ib.
          direction that legacy shall carry interest, ib.
                         a legacy shall be vested on decease of testator, ib.
                         legacy shall be vested on attaining a certain age or marriage, ib.
                                     not lapse, 172
          declaration that legacy is given on the condition that legatee shall release a
             certain estate, ib.
          direction that daughters shall execute releases, ib.
          and if they shall refuse, then their interest under the will shall cease, ib.
           that sum shall be paid directly after decease. 173
           declaration that legacies to certain persons shall be first satisfied, ib.
           direction that legacy shall not be taken in lieu of debt, ib.
           declaration that legacies shall be in addition to advancement and portions, ib.
           direction that inventory shall be made of chattels, 174
          and shall be signed by person using the chattels, ib.
           that two copies shall be made of schedule, ib.
          request that the husband of daughters will take particular name, ib.
           direction that wife shall be allowed the use of house during her life paying
             a certain rent, ib.
           declaration that there shall be no deduction for legacy duty, 175
           that executors shall regulate any doubt as to what passes by bequest, ib.
     devises and bequests of annuities, 176
          devise or bequest of annuity, ib.
           charge of the same upon land, ib.
          power of distress, ib.
                    entry, 177
           provision that if annuitant shall alien the annuity, or become bankrupt,
             annuity shall cease, ib.
           bequest of annuity, 178
           charge of several annuities upon real estates, ib.
           direction that annuities to females shall be for their separate use, ib.
           declaration that if person entitled to real estates shall purchase a sufficient
          sum of stock to meet the annuities, charge shall cease, ib.
     general devises and bequests of the whole of testator's property, 179
           general devise of freehold, copyhold, and leasehold estates to trustees upon
             the trusts hereinafter declared, ib.
           exception of particular messuage, ib. n. (b)
           of trust and mortgage estates, ib.
              settled property, ib.
```

### WILLS-continued. bequest of leaseholds to trustees, 179 devise and bequest of real and personal estate to trustees in trust, 180 general devise of real estate to uses, ib. bequest of personal estate to trustees, 180, 181 bequest of leasehold and other personal estate upon trusts hereinafter mentioned, 181 to the same uses and trusts as are declared of the freeholds, ib. exercise of powers, 182 of power over realty and personalty, ib. subject to an estate for life. ib. that lands shall be to the use, ib. messuages shall be upon trust, ib. if testatrix shall die in lifetime of husband. 183 that trustees shall stand seised to certain uses, ib. charge of sums to be given by any codicil, ib. to the uses and upon the trust following, ib. bequest of monies to arise from particular funds, 184 bequest of sum, ib. stock to trustees, ib. monies to arise from sale, ib. money to arise on contingency, ib. assured by policy, ib. declarations of uses of real estate, 185 devise of lands to uses, ib. to the use of trustees for a term upon certain trusts, ib. and after the expiration of term, ib. and subject thereto, ib. to the use of one in fee, ib. testator's heirs, ib. that wife shall receive an annuity in bar of dower and jointure, 186 with power of distress, ib. to the use of A B for life, ib. trustees to preserve contingent remainders, ib. and after A B's decease, 187 of such children of AB as AB shall appoint, ib. and in default, ib. to all the children as tenants in common in tail with cross remainders, ib. and in default of issue, 188 to heirs of the body of A B, ib. of AB in fee if he shall attain twenty-one years, or have issue, but if not to CD in fee, ib. of third or other sons in fee, but subject to like executory devise as expressed in respect to first and second sons, 189 of A B in fee, but if he shall have no son who attains twenty-one, ib. after decease of AB to his sons successively in tail male, ib. and in default of issue to second and other sons successively for life, ib. and after their respective decease to their sons successively in tail male, ib. of daughters as tenants in common in tail, 190 of trustees for ninety-nine years upon the same trusts for the benefit of one daughter and her issue as are declared before in favour of another, ib. as to one moiety of premises to uses and as to other to uses, ib. to the same uses and trusts as are declared of freeholds, ib. as to one estate to uses, &c. ib.

```
WILLS-continued
          as to another to uses, &c. 190
          general appointment to trustees to preserve contingent remainders depending
            on preceding covenants, 191
          devise to trustees to preserve contingent remainders. ib.
          to such uses as devisee shall appoint and in default, ib.
            the use of devisee for life, ib.
               of trustee for life in trust for devisee, ib.
                  devisee in fee uses to bar dower. ib.
     commencements of declarations of trust, 192
          commencement of declaration of trust of real estate, ib.
                                                          and personal estate, ib.
                                             term, ib.
          declaration that monies to arise from sale shall be upon same trusts as
            residuary estate. ib.
          commencement of declaration of trusts of personalty, or the proceeds of
            sales of lands, &c. 193
          declaration of trusts of term to be inserted in settlement. ib.
          trusts for the payment of debts and legacies, and by reference, &c. 194
          trust to raise sufficient to pay debts out of real estate, ib.
          although the personal estate is not got in, ib.
          and apply the money in payment of debts, &c. ib.
              to pay debts and legacies generally, 195
                      all expenses incurred in execution of trusts, ib.
          upon same trusts as residue, ib.
                              moiety, ib.
                               monies to arise from sale, ib.
                               are declared of freeholds, ib.
          trust for securing annuity, ib.
     declarations of particular trusts of real estate, 196
          trust to sell real estate, ib.
          direction as to the profits in the mean time, ib.
          upon trust for A B for life, and after his decease as to those premises, and
            after my decease to all the others, 197
          trust to pay rents to A B for life, and after his decease to stand seised of
            premises for first and other sons in tail, ib.
          trust for the benefit of the first son of A B who shall attain twenty-one, ib.
                to convey and settle premises to certain uses, ib.
                  pay the taxes, &c. ib.
                  repair house, 198
                  pay wages of stewards, &c. ib.
                  pay rents and profits of real or leasehold estates to married women,
          upon trust for the separate use of woman by reference to former trusts, ib.
          trust of term to authorize trustees to cut timber, 199
          and sell the same ib.
          and apply the monies in paying charges on the estates, ib.
                     residue upon the same trusts as are declared of the residue ib.
          trust to pay annuity to A B ib.
          direction that in settlement proper estates shall be limited to trustees to
            preserve, 200
          trust of term of years for further securing an annuity, ib.
          declaration that subject to the term remainder man shall receive the rents,
             ib.
```

```
WILLS-continued.
          proviso for cesser of term, 201
     trusts of mines, 202
          trust to work and sell produce, ib.
          and stand possessed of profits upon certain trusts ib.
         powers to do all acts necessary for working mines, ib.
          and to mortgage premises to carry on the work, ib.
     trusts of an advowson, 203
          devise of advowson upon trust, ib.
          to present son when it shall become vacant, if qualified, ib.
          but if son shall not be qualified, upon trust to present to son-in-law, ib.
          preference to be given to particular son-in-law, ib.
          and subject to the trusts, 204
          to present nominee of owner of real estate. ib.
          provision that sons and sons-in-law shall be appointed at any time, ib.
          to present a person under an honorary engagement to resign in favour of a
            son taking orders, ib.
     bequest of leaseholds and trusts thereof, 205
          bequest of leaseholds to trustees, ib.
          upon trust to pay the rents and perform the covenants, ib.
          and endeavour to effect renewals, ib.
              ensure the lives of cestuis que vie, 206
              apply money in effecting a renewal, ib.
              the surplus to persons entitled to premises, ib.
          or out of rents or by mortgage, to raise sufficient to renew, ib.
          and apply the money in effecting renewals, ib.
          surrender and accept leases, 207
          declaration that trustees shall stand possessed of premises, ib.
          upon same trusts as freeholds, ib.
          proviso that premises shall not vest, for the purpose of transmission un-
            til persons attain twenty-one years, 207
     declaration of trusts of personalty, 208
          trust to invest monies, ib.
          and vary securities, ib.
          direction that variation shall be with the consent of wife, and after her de-
            cease at the discretion of trustees, ib.
          trust to invest and vary a second sum very short, and by reference to the
            first. ib.
                  convert personal estate into money, 209
          to continue personalty in present investment, ib.
          trust to pay sum or residue to wife, if she shall survive testator, ib.
                       dividends of sum to married woman, or to such person as she
                         shall appoint, ib.
          her receipts to be sufficient discharges, 210
          subject to a sum of
                                  pounds, ib.
                     an annuity, i\bar{b}.
                     a life interest, ib.
                    bequests, ib.
          trust to pay the dividends of a sum of stock to wife if she shall continue
             unmarried, and if she shall marry a smaller sum, ib.
          and after her decease or marriage, upon trust to pay annual sum to
            widow, durante viduitate, 211
          and if she marry a smaller sum, ib.
          provision to be in bar of dower and jointure, ib.
```

### WILLS—continued. that if wife refuse such provision, trustees to stand possessed of sum of pounds as if she were dead, 212 trust for the benefit of married woman as she shall appoint, but not by anticipation, ib. of sum after decease of AB for such persons as AB shall by deed or will appoint, ib. and in default to A B as personal estate, 213 trust to pay interest of sum to AB for life and proportional part, 213 and on death of AB upon trust, ib. for such persons as would take under the statutes of distribution, 214 trust to pay interest to wife, she supporting child or children, ib. raise sum of money, the interest of which when invested, will amount to pounds a year, ib. pay interest thereof to wife, and raise deficiency out of other moieraise a sum of money and stand possessed thereof, or pay the same to A B 215 apply interest and dividends for the life of A B for his maintenance, ib. pay annual sum to AB, ib. for two, ib. if either die under twenty-one years, as to his share in trust for the other, if both die under twenty-one years, in trust for the children of X Y ib. but if no children, over, ib. trust monies to be as to one moiety upon trust, &c. ib. and as to the other moiety upon trust, ib. trust as an auxiliary fund for the payment of sum or portions, ib. trust to invest monies in lands, 217 to convert sum into money, ib. and lay out produce in real or leasehold estates, ib. until purchase of the estate interest to be paid to the persons entitled to the rents. ib. direction that leaseholds shall not vest absolutely in tenant in tail, 218 trusts providing for the bankruptcy of legatee, 219 that until assignment, bankruptcy, &c. trustees shall pay interest to AB for his life, ib. but if such events should occur then, over, ib. trusts of property as heir looms, 220 trusts of furniture, plate, and jewels, ib. as to furniture and plate, ib. to permit wife to use the same for life, ib. after her death as heir looms, ib. proviso that furniture shall not vest in tenant in tail, unless he attain twenty-one years, 221 power to the trustees to repair the furniture, &c. ib. exchange the furniture, &c. ib. permit the furniture to be altered, &c. ib. as to jewels, 222 in trust to permit wife to use them, ib. and after her decease upon trust as heir looms, ib. limitation of property in favour of children of testator, 223 to the use of all testator's children in tail with cross remainders, ib.

```
WILLS-continued.
          to the use of such children as AB shall appoint, 223
          and in default of appointment to all the children as tenants in common in
            fee. ib.
          to son for life, 224.
          to trustees to preserve contingent remainders. ib.
          after decease of son, ib.
          to his sons in tail male, ib.
          in default of his sons to second son for life, ib.
          to trustees to preserve, ib.
          and in default of issue to third and other sons successively for life, ib.
          and after their respective decease, to their sons successively in tail, 225
          to daughters as tenants in common in tail, ib.
          to the use of trustees for 99 years, upon the same trusts for the benefit of
             one daughter and her issue, as are before declared in favour of another, is.
          to all the sons for life, ib.
          to trustees to preserve contingent remainders, 226
          and on failure of such estates, ib.
          to son for term of years, ib.
            trustees to preserve, ib.
             eldest son for life, 227
             trustees to preserve during the life of eldest daughter, and pay the rents
               to her separate use, 231
          receipt clause, ib.
          to her sons in tail, and in default to second daughter in same manner, ib.
             trustees during respective lives of testator's second and other daughters,
               to apply rents for their benefit, and remainder to their sons in tail
               male, 232
             daughters for life as tenants in common, ib.
             trustees to preserve contingent remainders of respective shares, ib.
          respective share to go to first and other sons of every daughter, and in de-
             fault of issue as well original as accruing share shall go, ib.
          to remaining daughters for life as tenants in common, ib.
             trustees to preserve, 233
          accruing share to go as original shares, and in default of all issue except
             one daughter, as to entirety, ib.
          and after his decease to his sons in tail male, ib.
          to second son for life, 227
             his sons in tail male, ib.
             third and other sons for life, to preserve, ib.
             their sons in tail male, ib.
             eldest daughter for life, 228
             her sons in tail male, ib.
             second and other daughters for life, ib.
             their sons respectively in tail male, ib.
             sons of sons in tail general, ib.
                    daughters in tail general, 229
             daughters of eldest son in tail general, ib.
                           second son in tail general, ib.
                           third and other sons in tail general, ib.
                           eldest daughter in tail general, ib.
                           second and other daughters, ib.
             trustees to preserve 230
         proviso that if AB shall have sons born in the lifetime of testator they
```

```
WILLS-continued.
            shall take life estates instead of estates tail, remainder to trustees, remain-
            der to sons in tail, 230
          similar provisoes as to daughters. ib.
          to the use of such children of AB by CD as AB shall by deed or will
             appoint 231
          to daughters for life to trustees to preserve. 233
             sons in tail, ib.
     trusts of term of years in favour of children of testator 234
                              to raise portions for younger children, ib.
          to raise portions for the children (another form) 235
     provisions for the benefit of children of testator, 236
          provision for the survivorship and accruer of shares, ib.
                            maintenance of children out of the rents. 237
                            advancement of children out of the rents, 238
                    that remainder man shall receive the rents subject to the term, 339
                    for the cesser of the term. ib.
                                 pounds shall be paid to sons or daughters for main-
           directions that
             tenance under twelve, and
                                             pounds after twelve till twenty-one. 340
           accumulation clause for real estate, 241
           trustees to apply sums for maintenance. ib.
           and invest the residue, ib.
           and discharge sums charged on the estate, ib.
           and invest the residue in purchase of lands to be settled to the uses of will.
           stand possessed of accumulations upon the trusts aforesaid. ib.
           proviso that an offer shall be made to eldest son to purchase premises when
           they are sold. 243
      trusts of personalty in favour of children and grand-children of testator, 245
           trust for all the children, ib.
           as to shares of sons absolutely, ib.
           but if daughters are married shares to be for their separate use, ib.
           their receipts to be sufficient discharges. ib.
           the same by reference for the survivorship clause, 246
           and after decease of daughter stock to be in trust, ib.
           if daughter shall have no issue upon trust to pay moiety as daughters shall
              appoint, and in default in trust for such persons as are entitled under the
              statute of distributions. ib.
           as to the other moiety in trust, 247
           if no child shall be entitled, trust monies to, ib.
           sink into residue. ib.
           to go to A B absolutely, ib.
           if no child shall attain a certain age, trust monies shall be, ib.
           in trust for daughters, ib.
                       all testator's children at twenty-one or marriage, and if any die
                          under that age, their share to go to the survivors, ib.
                       the younger children equally, and if but one, to that one, ib.
           in default of such issue, to eldest son, 248
           trusts of a sum of money for the benefit of the children as parents shall an-
              point, 249
            and in default of appointment, ib.
            in trust for all the children, ib.
            appointed shares to be brought into hotchpot, ib.
            provision for the survivorship and accruer of shares, 250
```

### WILLS-continued.

provision for the maintenance and education of the children, 251 advancement of the children, 252

accumulation clause for personalty, 253 proviso for maintenance (very short) 254 ih.

advancement

the maintenance and education of children out of the interest of their shares, 255

and accumulation of the residue, ib.

invest and vary the securities, ib.

stand possessed of the accumulations upon the same trusts as are declared of the fund out of which the accumulations proceed, ib. proviso for the maintenance of single child, 256

advancement

that till a sufficient part of the trust monies are invested, trustees shall pay wife's annuity and childrens' maintenance and advancement the sums in their hands, 257

trust of a second sum to invest and vary, (short) 258

and stand possessed thereof upon the same trusts for the benefit of children of M B, as have been already declared in favour of the children of Jane B, it trusts for the children of daughter and their issue, 259

and if no child or issue to daughter as personal estate, ib.

if there shall be no child, then the sum to be upon the same trusts as at declared of another sum, 260

proviso for double portion to eldest or only son, ib.

that if any daughter shall marry without consent, trustees shall stand possessed of her portion, 261

in trust for the other children, ib. for her separate use, 262

and after her decease to her children, ib.

if no children, to testator's children in same manner as their original shares, ib.

power to daughter to appoint the interest of her share to her husband, 263 proviso that if any child shall marry, and die in testator's life time, leaving issue, such issue shall have child's share, 264

trust to accumulate the rents and profits of lands for twenty-one years, 265 for twenty-one years, 266

in trust that when any child of son shall attain the age of twenty-one to raise a sum for its benefit, ib.

and raise other sums for the other children as they attain twenty-one until sum shall be exhausted, 267

but if sum shall not be exhausted during the period, the residue to go to such children as shall attain twenty-one, ib.

pounds during the minority of children, and trust to raise the sum of pay it to wife for their maintenance and education, 268

in trust for all the children for their lives, 269

and after their decease as to their respective shares, ib.

in trust for their children respectively, ib.

provision for the survivorship of shares in favour of the children and ther children. ib.

trust for all the children of particular children of testator, 270

declaration that portions shall be in satisfaction of portions provided by indenture, ib.

WILLS—continued.
proviso that if children shall not take, their shares to go to their issue,
any of the sons shall die before they attain twenty-five, shares
in the trust monies shall be in trust for his issue as he shall appoint, 272
and in default of appointment, in trust for the issue at twenty-one, or if
daughters at twenty-one or marriage, ib.
and if there be no issue, the share shall be, 273
in trust for all the other children, ib.
provision that share of daughters shall be to their separate use, ib.
their receipts to be valid discharges, 273
and after their decease their share to go to their issue as they shall appoint,
and in default of appointment to all the children equally, ib.
and if daughters shall die without issue their shares to go to the surviving child, ib.
trusts for brothers and sisters of testator, 275
and if no children trust monies to go to brothers and sisters, ib.
shares of brothers and sisters without issue to go to surviving brothers and sisters, ib.
proviso that if brothers and sisters die in testator's life-time, leaving issue,
their share shall go to their issue,276
provision for illegitimate children, 277
devise of real estate to natural son in tail, ib.
gift of stock to certain natural children, ib.
furniture to natural children by a certain woman, ib.
devise of messuage to trustees, 278
upon trust for son for life, ib.
to such uses as he shall appoint, $ib$ . and in default of issue to testator's right
heirs, ib.
trust for the maintenance of natural child till twenty-one, and when he shall
attain twenty one, io.
in trust for him, ib.
but if he shall not attain twenty-one then to testator's executors, ib.
provision for advancement, ib.
to pay interest to natural children, 279
and after their decease, ib.
to transfer their respective shares to their issue as they shall respectively direct, ib.
and in default of direction unto all the children at a certain age, ib.
and if any of the children shall die without issue, ib.
upon trust to pay interest of their share to the other children, ib.
and after their decease to their respective children as above, 280
and if all the children shall die without issue, over, ib.
upon same trusts in favour of children as are declared of monies to arise from sale of lands, ib.
power to Mary B, or in default to trustees to appoint to any person what- ever, 281
declaration that the general power of appointment is given to the donees
with the view of providing for the children of M B by testator as well
living as to be born hereafter, ib.
DEDVISIONS FERRING TO THE FRACE OF TESTINOL. 200

```
WILLS—continued.
         devise and bequest of trade and messuage connected therewith upon certain
          upon trust to conduct the business until son attain a certain age, and if he die
            before that age or decline business until second son shall attain the
         and if second son should die or decline to sell, 284
          and stand possessed of proceeds of sale in trust for testator's execu-
          but if either son shall attain twenty-one then to convey the trade, &c. to such
            son. ib.
          proviso that eldest son shall give security to admit second to a joint share in
            the concern, 285
          upon trust to carry on until youngest son attain twenty-one, or if he die
            under that age until second son attain twenty-one, ib.
          declaration of the trusts of trade, warehouse and profits, 286
          powers to trustees to manage trade, ib.
          power to enter into contracts, ib.
          to increase or diminish business, ib.
            make purchases, ib.
            adjust and compromise debts, 287
            sell premises, ib.
            discontinue trade, ib.
            hire clerks and workmen, ib.
            do all other matters, ib.
          that expenses shall be paid out of profits, &c. and next out of personal
             estate, ib.
          direction that sons shall be employed in business and be instructed therein,
            and receive reasonable salary, 288
          direction to trustees to assign business to son on attaining twenty-one if he
             shall give security to pay portions to other children, 289
          provision for the sale of testator's business to his sons, 290
                    that sons shall pay nothing for good will, ib.
          power to take security for the purchase money, ib.
          and to alter securities, 291
          sons not to be compelled to pay more than a certain sum by the year, ib.
          declaration that trustees shall stand possessed of testator's share in trade and
             effects, 292
          as to monies, ib.
          upon trusts declared of residue, ib.
          as to share in partnership stock and leasehold premises, ib.
          if eldest son shall engage in business, ib.
          in trust for him, ib.
          if eldest son shall not attain twenty-one or refuse to carry on business, ib.
          and second son shall be willing, ib.
          in trust for second son, 293
          if neither shall attain twenty-one or will carry on business, ib.
          in trust for third son, ib.
          and if he shall die or refuse, ib.
          or the trade be discontinued, ib.
          upon trust to sell the same, ib.
          and stand possessed of the proceeds upon trusts declared of residue, ib.
          declaration that on attaining twenty-one eldest son shall be admitted a
             partner and be entitled to one fourth of the profits, 294
```

WILLS	—continued.
R	similar declaration as to the second son, 294
	direction that sons shall notify their election in writing to trustees to become partners, ib.
<b>!</b>	if sons be incompetent or improper persons power to trustees to dissolve
ı <b>t</b>	the partnership so far as respects such son, ib.
	and the son shall cease to be a partner and be entitled to provision given to sons who refuse to engage in the trade, 295
ľ	direction that if sons shall refuse to engage in trade they shall have the
	sum of pounds out of the capital thereof, and share of the accumulated interest, but nothing further, ib.
).	declaration that if any son shall not engage in business, other sons shall be
	entitled to his share, ib.  and if but one son shall carry on trade the whole business shall go to that
t .	one son, he paying interest and certain sum to his trustees, 296 direction as to title of firm, 297
	and if all the sons shall refuse upon the terms mentioned, ib. direction that every son shall have one sixteenth thereof until they shall attain twenty-eight years or be married or die, ib.
	similar benefit to son on his withdrawal from the partnership, ib.
	provision that no son declining to engage in the business shall carry on the
	same trade within the bills of mortality, and if he shall do so his one sixteenth shall cease, ib.
	direction that each of the sons engaging in trade or attaining twenty-three
	years or marriage, shall be entitled to sum of pounds, 298
	and sons not engaging in trade shall be entitled to an additional sum of pounds on attaining twenty-five years, ib.
Į.	provision that when all the sons who shall engage in business shall have attained the age of twenty-eight years trustees shall make up accounts, 298
1	and after paying the before-mentioned sums to sons raise the sum of
•	pounds and invest the same, 299
	and stand possessed thereof upon the trusts hereinafter mentioned, ib.
	and after all the sums have been paid, upon trust to divide the residue into
	the double number of sons who shall have engaged in business and at-
	tained the age of twenty-eight years, or who shall die before, leaving
•	widows or children or children alone, ib.
•	and if all such sons attain twenty-eight, 300
	in trust for all of them equally, ib.  and if only one such son shall engage in trade the whole to that one, ib.
	provision for the widows of sons engaging in trade out of one share of residue, ib.
	and the other of the shares to be divided amongst the other sons, 801
	the share of the widow and children to be paid to trustees upon trust to invest, ib.
	and stand possessed thereof upon the same trusts as are declared of the sum
	and if there shall be no such son who shall attain twenty-eight years or
	leave a widow or children, ib.
	then the residue shall be, 302 in trust for children of daughters of testator who have attained twenty-one
	years, to take per capita and not per stirpes, ib.

### WILLS-continued.

and if there shall be no such children. 302

in trust for nephews and nieces of testator, ib.

declaration that trustees shall stand possessed of the sum of pounds, il. upon trust for all testator's sons for life.

and after their decease son's share to be upon trust for their widows unl the youngest child shall attain twenty-one years, ib.

and then equally between all the children and widow, ib.

and if such son shall leave no widow but shall leave children then in trus for the children equally, their shares to be vested at twenty-one year,

proviso for survivorship and accruer. ib.

and if all the children shall die under twenty-one years save one the whole

of the parent's share to go to that one, ib.

direction that after the decease of sons the interest of the shares, subject to the provisions made for widows, shall be applied to maintenance and education of the children, and the residue to accumulate for the benefit of person ultimately entitled to fund. ib.

if son shall leave widow and no children, 304

in trust as to son's share for the widow during her life and widowhood,

and then to be divided between testator's sons upon the same trusts as at declared of their original shares, ib.

and if no son shall have any children, 305

upon trust for all testator's daughters children, ib.

and if no daughter shall have any children upon trust, ib.

provision that in case other son shall be born he shall be entitled to the sum of pounds, ib. pounds, and an equal share of the

if any of testator's present sons shall refuse to engage in trade, any after born son may be admitted in the place of such son as shall so refuse, and his share shall be in lieu of the legacies left to him, 306

if any son shall die before twenty-eight years leaving a widow, the account and valuation shall be taken immediately, ib.

if all testator's sons shall refuse to engage in trade the trade shall be sold,

and after such sale trustees shall invest the monies arising therefrom, ib. power to trustees to dissolve partnership and enter into a new one, 308

accept security from the testators's partners in trade for the payment of the value of his share, 309 not to call in monies so secured until other funds are ex-

hausted, ib.

trusts of profits, 310

upon same trusts as residue, ib.

trust to pay annuity to wife out of the profits of the trade, and proportions part from the last time of payment and her death, or the relinquishment of business, ib.

trust to invest the profits subject to the purposes aforesaid in order that they may accumulate, 311

and alter the securities thereof, ib.

per cent on the direction that the profits of trade shall first be liable to amount of the capital stock, which shall go to pay wife's annuity and maintenance of children, ib.

and subject thereto to be invested and accumulated, ib.

WILLS-continued.

```
and divided into as many shares as testator's children, each of whom shall
       be entitled to a share, 312
     one moiety payable at twenty-one years, and the other at twenty-five
     declaration that the residue shall be employed in carrying on business.
     provision for the survivorship or accruer of shares, ib.
     trustees to take an account of stock and continue the same yearly, 314.
commencements of powers, 315
     commencements of powers to trustees, ib.
                                for tenant for life, ib.
                                to any tenant for life if twenty-one years, and to
                                   the trustees during minority of tenants for
                                   life and tenants in tail. 315
                                 to trustees with consent of tenant for life, 316
powers, 317
     power to trustees at the request of any person entitled to rents, and during
       minority at their own discretion, ib.
     to make partition, ib.
       sell and exchange, ib.
     power to revoke the existing uses and limit new uses, 318
     and to give receipts, ib.
     application of monies to arise from sale, &c. 319
     to discharge incumbrances, ib.
     and invest residue in the purchase of lands, ib.
     to be settled to the same uses, ib.
     power to invest monies until purchase is effected, 320
     and pay the interest to persons entitled to the rents and profits, ib.
     power to trustees to repair or rebuild, and effect an insurance, 321
                          enfranchise copyholds, 322
                          give receipts for consideration money, ib.
     power to lease for twenty-one years, 324
                        three lives, 325
              grant building leases, 326
              trustees to lease freeholds or leaseholds, until they are sold,
                   328
                        (if it shall be desired by persons entitled to rents to sell),
                           real estate, 329
      invest and vary and stand possessed of sums upon certain trusts, ib.
      direction that trustees should receive rents until premises are sold, for the
        benefit of persons entitled to interest 330
      power to AB to cut timber to a certain amount, ib.
               AB &c. 331
      to charge premises with jointure with usual powers for securing it, ib.
      and appoint premises for a term of years for further securing jointure,
      to charge with portions for younger children, ib.
                                  pounds, if two the sum of
      if but one the sum of
                                                                   pounds, and if
        three or more, the sum of
                                       pounds, ib.
      and secure the same by a term of years, 333
      proviso that premises shall only be liable to the payment of
                                                                       pounds for
        jointure, and
                          pounds for portions, ib.
                                                                    G G 2
```

proviso that no jointure shall take effect until persons making it come into

WILLS-continued.

```
possession, 334
                    charge of portions shall take effect until persons making it
                      come into possession, ib.
    power to grant life estate or rent charge to husband. 335
              trustees during minority to appoint stewards, 336 to advance a sum of money to any of testator's sons to
                          engage in trade, 337
                       if son-in-law shall need a sum of money, to advance it out
                          of portion bequeathed to wife, 338
                                                                            pounds
                       by appointment of AB, to raise the sum of
                          as she shall think proper, 339
    such sum not to be raised in case of second marriage, ib.
     power to trustees to raise the sum of
                                              pounds for AB 340
                                                          daughter or any other
                                                             woman, ib.
           to change trustees, 34
     the trust premises to be conveyed to the new trustees with the like power,
     trustees to be chargeable only for the monies they receive, ib.
     direction that trustees shall only be responsible for their own acts, ib.
     and that trustees shall retain all costs, 343
provisoes and declarations, 344
     proviso that every person taking under the limitations hereinbefore mention-
       ed, and the husbands of such as are females shall take and bear a certain
       name and arms, and do all necessary acts for that purpose, ib.
     and if any person refuse to do so, the limitation to them shall be void,
     and the lands shall go over as if such person were dead without issue, with-
       out prejudice to any charge created before the cesser, ib.
     declaration that the cesser of any life estate shall not prejudice any contin-
       gent remainder, but the trustees shall pay rents as if tenant for life so
       refusing were dead, ib.
     provision for shifting an estate on the accession of another estate, 347
     direction that if a second estate shall devolve on son he is to have the same
       powers over it as are given him over the first, 348
     declaration that devise and bequest to AB are made on the condition that
                      he acquiesce therein and carry same into effect, 349
                    trustees shall lay out money in freehold, copyhold, or lease-
       hold estates, 350
     power of sale and exchange to be inserted in settlement, ib.
            for lessing, ib.
               jointuring and portioning, ib.
     all usual powers and clauses to be contained in settlement, 351
trusts of residue, 352
     devise and bequest of residue of real and personal estate to trustees, 352
           of all residuary real estate to A B in fee, ib.
           of estates which shall lapse or become void, ib.
     declaration of trusts of residue, 353
    bequest of residue of personal estate to trustees, ib.
    trusts of the residue, ib.
    pay over residue to wife, ib.
```

ř

```
WILLS-continued.
          if no person shall become entitled, trust monies to sink into residue, 353
          devise and bequest of trust and mortgage estates, 354 declaration that trustees' receipts shall be sufficient discharges, 355
     appointment of executors and guardians, 356
          appointment of executors, ib.
                            wife, and after her decease, ib.
                                                           of AB and CD guardians of
                                                              children, ib.
     execution and attestation, 357
          signature. ib.
          attestation, 358
     codicils, 359
           recital that testator has in his will bequeathed property to two trustees, ib.
           and that he has given each of them a legacy. ib.
           death of one trustee, ib.
          revocation of devise, bequest, and legacy, ib.
           and appointment of new trustees, ib.
           and devise and bequest of property to them upon the trusts of the will, ib.
           legacy to new trustees, 360
          signature. ib.
          attestation, ib.
          codicil devising lands contracted for since the date of the will, 361
          nuncupative will, 362
          formalities requisite to, 362
     entire form, chiefly of real estate, 363 revocation of former wills, ib.
          if personal estate insufficient, power to raise deficiency by sale or mort-
             gage, ib.
           bequest of leasehold house to trustees upon trust to permit wife to occupy
             the same during widowhood, ib.
          and after her decease or marriage, house to form part of personal estate,
           bequest to executors, ib.
           legacies to servants, ib.
                             pounds for mourning, 364
           bequest of
                      various other legacies, ib.
          direction that a legacy shall be vested on decease of testator, ib.
          general devise of real estate to uses, ib.
          to the use of trustees for a term upon certain trusts, ib.
                      that wife shall receive annuity in bar of dower and jointure, ib.
          with power of distress, 365
          to eldest son for life, ib.
          and after his decease, to his sons in tail male, ib.
          to second son for life, ib.
             his sons in tail male, ib.
             third and other sons for life, ib.
             their sons in tail male, 365
             daughters as tenants in common in tail, ib.
             sons of sons in tail general, 366
             the use of testator's heirs, ib.
          general devise to trustees to preserve the contingent remainders, ib.
          accumulation clause, ib.
          trustees to apply sums for maintenance, ib.
```

```
WILLS-continued.
         and invest the residue, 366
              discharge sums charged on the estate, 367
              invest the residue in the purchase of lands to be settled to the uses of
                 the will, ib.
              stand possessed of accumulations upon trusts aforesaid. ib.
          declaration of trusts of term. ib.
          to secure an annuity to wife, ib.
            raise portions for younger children, 368
          proviso for the survivorship and accruer of shares, 369
                          maintenance of children out of the rents, ib.
                           advancement of children. ib.
         declaration that subject to the term remainder man shall receive rents. 370
          provision for cesser of term, ib.
         power for tenant for life if twenty-one, and to trustees during minority of
            tenants for life and tenants in tail to lease for twenty-one years, ib.
         power to my son, 371
          to charge premises with jointure, with usual power for securing it. ib.
         and appoint premises for a term of years for further securing jointure, 372
         to charge with portions for younger children, ib.
         if but one, the sum of
                                     pounds, if two, the sum of
                                                                      pounds, and if
            three or more, the sum of
                                            pounds, ib.
         and secure the same by a term of years, ib.
         proviso that premises shall only be liable to the payment of
                                                                               pounds
                                    pounds for partions, 373
            for jointures, and
          proviso that no jointure shall take effect until son making it shall come
                            into possession, ib.
                          charge of portions shall take effect until person making it
            come into possession, 374
         bequest of residue of personal estate, ib.
         devise and bequest of trust and mortgage estates, ib.
         power to change trustees, ib.
         the trust premises to be conveyed to the new trustees with the like
            powers, 375
         trustees to be chargeable only for the monies they receive, ib.
         direction that trustees shall only be responsible for their own acts, 376
         and that trustees shall retain all costs, ib.
         declaration that trustees' receipts shall be sufficient discharges, ib.
         appointment of executors and of AB and CD guardians of children, ib.
         signature, 377
         attestation, ib.
    entire form of personal estate, 378
         appointment of executors, ib.
         general bequest of personal estate to trustees, ib.
         upon trust to convert personal estate into money, ib.
         trust to invest monies, ib.
         and vary the securities, ib.
         direction that variation shall be with consent of wife, and after her decease
            at the discretion of trustees, ib.
         declaration of trusts of personalty, 379
          upon trust to pay debts and legacies generally, ib.
                            annual sum to widow durante vid., ib.
         and if she marry, a smaller sum, ib.
         trust for all the children, ib.
```

### WILLS-continued.

as to shares of sons absolutely, 380 but if daughters are married, shares to be for their separate use, ib. their receipts to be sufficient discharges, ib. if no child shall be entitled, trust monies to go to AB absolutely, ib. provision for the survivorship and accruer of shares, ib. maintenance and education of children, ib.

advancement of children, 381

accumulation clause. ib. proviso that if children shall not take, their shares shall go to their issue.

power to change trustees. ib.

the trust premises to be conveyed to the new trustees with the like powers,

trustees to be chargeable only for the monies they receive, ib. direction that trustees shall only be responsible for their own acts, ib. and that trustees shall retain costs, ib. declaration that trustees' receipts shall be sufficient discharges, ib.

signature. 384 attestation, ib.

WITNESS. See ATTESTATION.

WORKMEN.

Ė

agreement to pay wages of, 66



TO

# THE SYNTHESIS.

### Α.

```
ADVOWSON,
agreement for the purchase of an, v, ix

AGENT,
agreement for the purchase of property by an, i
bond from attorney for the security of his London, xxxiv
will devising, lxiii, lxiv

AGREEMENTS,
for the purchase of property by an agent, i
freeholds of moderate value, (usual clauses,) ii
a manor or large freehold property, ib.
property of married women, (the agreement being by the
houses or other buildings, ib.
copyholds, iii
leaseholds, ib.
where lessor's assent is necessary, ib.
sale by two joint tenants, tenants in common, or coparceners to pur-
```

chaser, ib.

vendor to two as joint tenants, or tenants in common, iv purchase of estate for life of vendor, ib.

per auter vie, ib.

for lives, ib.

```
AGREEMENTS-continued.
```

for the purchase of a manor, advowson, and other premises, v

freeholds, copyholds, and leaseholds, ib.

lands, together with timber, with provisions for the valuation of the timber, ib.

house, together with fixtures, with provision for the valuation, vi

a plantation and slaves situate in the West Indies, ib. freeholds, where part of the money is secured on the many

mises by way of mortgage, ib.

lands, where the purchase money is to be paid by instal ments. vii

for a purchase where time is to be the essence of the contract, ib.

the purchaser is to pay interest on purchase money if the contract is not completed by a certain day, ib.

for the purchase of lands where vendor is to retain title-deeds, ib.

the title-deeds are to be delivered to purchase, but he is to covenant to produce them, viii there are special clauses introduced providing for defects in title, limiting some inquiries and precluding others, ib.

a reversion, ib. an advowson, ix tithes, ib. growing timber, ib.

good-will of trade, ib.
lands where purchaser is to discharge incumbrances, x
pay a share of the expenses of

inclosure, ib. for a purchase where all disputes are to be referred to arbitrators, ib. the purchase of lands where the title is defective, ib.

part of the title is defective, xi

repurchase of premises on defect, not being cleared up, ib.

a mortgage of freeholds, copyholds or leaseholds, ib.

to grant an annuity secured on freehold, copyhold, or leasehold property, xii a personal annuity, ib.

for a house in town for a term of years (taken instead of a lease,) ib.

furnished house in town for a term of years (taken instead of a lease,) xiii or unfurnished house in the country for a term of years, (taken instead of a lease,) ib.

house in town or country, either furnished or unfurnished, for months or weeks (taken instead of a lease,) ib.

first or other floor unfurnished, for a year, months, or weeks, ib.

furnished xiv

by a medical man, attorney, or other person carrying on profession or trade for a first or other floor, furnished or unfurnished, for a year, months, or weeks, ib. for a lease of a house in town, with or without furniture, for a term of years, ib.

the country, an under-lease of a house in town or country, furnished or unfurnished, is a lease of a small shop, ib.

shop in a principal street, ib.

the under-lease of a shop, xvi a lease of a public-house, ib.

house by tenant in tail, ib.

```
AGREEMENTS—continued.
     for a lease of a house by husband and wife, seised in right of his wife, ib.
                       copyhold messuage for a term of years, xvii
                      farm by owner of inheritance, or his steward, ib.
                               tenants in tail, ib.
                               husband in right of his wife, ib.
         an under-lease of a farm, xviii
         a lease of tithes, ib.
                   glebe lands, ib.
           repairing lease of a house, the lessor being the owner of the inheritance, ib.
                                          having only a term in the premises, xix
           building lease of freeholds, ib.
                             copyholds. ib.
                        where a surety joins, ib.
                              the undertaking is very extensive, xx
           finishing lease, ib,
           lease of an unfinished house, which has been partly completed by another, ib.
         building a small house, xxi
                    mansion, house, chapel, or any other large erection or erections, ib.
         exchange of freeholds, ib.
                     copyholds, xxii
                     leaseholds, ib.
         the partition of freeholds by joint tenants, tenants in common, or co-
                             parceners, ib.
                           copyholds by joint tenants, tenants in common, or co-
                             parceners, ib.
                           leaseholds by joint tenants, tenants in common, or co-
                             parceners, xxiii
                           an estate in reversion or remainder by joint tenants, tenants
                             in common, or coparceners, ib.
                           freeholds by joint tenants, &c. where commissioners are ap-
                             pointed to make partition, ib.
                           copyholds by joint tenants, &c. where commissioners are
                             appointed to make partition, ib.
                           leaseholds by joint tenants, &c. where commissioners are
                             appointed to make partition, xxiv
     to refer disputes to the arbitration of one arbitrator, ib.
                                           two arbitrators. ib.
        enfranchise copyholds, xxv
     between author and publisher for sale of a work, where sum is paid for the
                                                          copy-right, ib.
                                                       where the profits are divided, ib.
                                                       by commission, xxv
     for the editing a work, between publisher and editor, xxvi
             translating a work, between publisher and translator, ib.
             between publisher and engraver for the engraving of a painting, ib.
                     principal and factor for the sale of goods in a city or town, ib.
     to charge lands with the payment of a sum of money, xxvii
      to pay the debts of another, ib.
             debt contracted during infancy, ib.
     by bankrupt to pay debt which is barred by his certificate, ib.
     to dismiss a chancery suit, xxviii
      for the presenting such person as A B shall appoint, ib.
      to apply for an act of parliament, ib.
```

ť

٤

ı

ł

1

### ANNUITY.

agreement to grant, secured on freehold, copyhold, or leasehold property, xii a personal, ib.

bond by grantor to annuitant to secure the payment of, where the same is repurchasable. xxxi

bond by grantor to annuitant to secure the payment of, where the same is not repurchasable. ib. will devising an, lxiv

ARBITRATORS.

agreement for a purchase where all disputes are to be referred to, x to refer disputes to the arbitration of one, xxiv two. ib.

bond for a reference to, xxxvi

ATTORNEY.

agreement by an, medical man, or other person carrying on profession or trade. for a first or other floor, furnished or unfurnished, for a year, months, or weeks,

bond from, for the security of his London agent, xxxiv

AUTHOR.

agreement between, and publisher for sale of a work where a sum is paid for the copyright, xxv

profits are divided, ib. by commission, ib.

### B.

### BANKERS.

bond from country, to London, as a security for any advances to be made to the former, xxxiii

a similar bond, where it is intended to be a continuing security, notwithstanding change of partners in the firm, ib.

from customers to, as a security for any monies to be advanced to the former, ib.

BANKRUPT.

agreement by, to pay debt which is barred by his certificate, xxvii

bond by principal and surety given to a purchaser or mortgagee where it is doubtful whether vendor or mortgagor will not become a, before the end of two months, xxix

BANKRUPTCY.

will providing for the, of devisee, xlvi of legatee, li

from vendor to purchaser or mortgagor to mortgagee on a title being defective, xxix

> as a security against a right of dower, ib.

> > miles

by principal and surety given to a purchaser or mortgagee where it is doubtful whether the vendor or mortgagor will not become a bankrupt before the end of two months, ib.

by vendor to purchaser to secure the conveyance of certain premises by infants when they attain twenty-one years, xxx

on the surrender of a copyhold estate, containing covenants for title, ib.

of good will of a trade not to trade within of a certain town, ib.

### BOND—continued.

by mortgagor of freeholds to mortgagee for payment of the mortgage money, ib.

copyholds

xxxi

by grantor to annuitant to secure the payment of the annuity where the same is repurchasable, xxx

by grantor to annuitant to secure the payment of the annuity where the same is not repurchasable, ib.

on marriage for making provision for the wife and issue of the marriage in case of the death of husband, xxxi

to secure the payment of money from one to one, xxxii

where there are one or more sureties. ib.

it is to be repaid by instalments, ib.

paid on notice from the obligee, ib.

for the transfer of stock by a certain day, ib.

by country bankers to London bankers as a security for advances to be made to the former, xxxiii

a similar, where it is intended that it shall be a continuing security notwithstanding change of partners in the firm, ib.

by customers to bankers as a security for any monies to be advanced to the former, ib.

by principal and sureties to a tradesman as a security for any goods advanced to principal, ib.

from attorney for the security of his London agent, xxxiv for the performance of covenants contained in a lease, ib.

an indenture of even date, ib.

for the faithful conduct of clerk or servant, ib.

by a principal and surety that the former will not divulge the secret of trade,

two sureties for the performance of duties of the collector of

a chapel, ib.

by legatee to executor for refunding a legacy in case of a deficiency of assets,
ib.

post obit, ib.

ı

ŧ

for a reference to arbitration, xxxvi

indemnifying a person against any loss to be sustained by the execution of indentures, ib.

securing an undertaking to build a chapel or other buildings, ib.

indemnifying a person against all loss to be sustained on account of accepting a bill, ib.

the due performance of the trusts of indenture or will, xxxvii BUILDING.

agreement for, a small house, xxi

mansion, house, chapel, or other large erection or erections, ib. bond for securing an undertaking to build a chapel or other, xxxv

C.

CHARGE.

agreement to, lands with the payment of a sum of pounds, xxxii CHILD.

will providing for a single, li

CLERK,

bonds for the faithful conduct of a, xxxiv

CODICIL.

changing trustees of will, lxv

where lands contracted for since the date of the will are devised, ib.

COLLECTOR.

bond by a principal and two sureties for the performance of the duties of the, of a chapel, xxxv

CONTRACTED.

will of an estate, for, xivi

codicil where lands, for since the date of the will are devised, lxv

COPARCENERS,

agreement for sale by two, to purchaser, iii

COPYHOLDS,

agreement for the purchase of, iii

freeholds and leaseholds, v

mortgage of, freeholds or leaseholds, xi to grant an annuity on, freehold or leasehold property, xii for a lease of a, messuage for a term of years, xvii

building lease of, xix

exchange of, xxii

to make partition of, where commissioners are appointed to make partition, xxiii

to enfranchise, xxv

bond from vendor to purchaser on the surrender of a, estate, containing comnants for title, xxx

by a mortgagor of, to mortgagee for payment of mortgage money, xxxi COUNTRY.

agreement for an unfurnished or furnished house in the, for years, (takea instead of a lease) xiii

a house in town or, either furnished or unfurnished, for months, or weeks, (taken instead of a lease) ib.

the lease of a house in the, with or without furniture for a term of years, xv

the underlease of a house in town or, furnished or unfurnished, ik

### D.

DEBTS,

will, where personal estate is exempted from payment of, lxiv DEFECTIVE TITLE,

agreement for the purchase of lands where there are special clauses providing for, limiting some inquiries and precluding others, viii

the purchase of lands where there is a, x where part of title is defective, xi

bond from vendor to purchaser or mortgagor to mortgagee on a, xxix DOWER.

bond from vendor to purchaser or mortgagor to mortgagee as a security against a right of, xxix

will devising premises to uses to bar, lxv

E.

EDITOR.

agreement for editing a work, between publisher and, xxvi

ENGRAVER

agreement between publisher and, for the engraving of a painting, xxvi EXCHANGE,

agreement for, of freeholds, xxi copyholds, xxii leaseholds, ib.

F.

FACTOR.

agreement between principal and, for sale of goods in a city or town, xxvi FARM.

agreement for lease of a, by owner of inheritance or his steward, xvii tenant in tail, ib.

husband in right of his wife, ib. underlease of a, xviii

FIXTURES.

agreement for the purchase of house together with, with provisions for their valuation, vi

FLOOR,

agreement for a first or other, unfurnished, for a year, months, or weeks, xiii furnished

by a medical man, attorney, or other person carrying on profession or trade, for a first or other, furnished or unfurnished for a year months or weeks, ib.

FREEHOLDS.

agreement for the purchase of, of moderate value (usual clauses) ii

large, property, ib. copyholds and leaseholds, v

where part of the purchase money is secured on the premises by way of mortgage, vi

for mortgage of, copyholds, or leaseholds, xi

to grant an annuity secured on, copyhold or leasehold property, xii for a building lease of, xix

exchange of, xxi

partition of, by joint tenants, tenants in common, or coparceners,

where commissioners are appointed to make partition, xxii

bond by a mortgagor of, to mortgagee for the payment of mortgage money, xxx will of large, xxxviii

of moderate value, xl, xli

large, devising them to trustees to settle, xlii

and renewable leaseholds, lix

FURNITURE.

agreement for a house in town with or without, for a term of years, xiv the country

will of plate, jewels, and, l

G.

GLEBE LANDS,

agreement for a lease of, xviii

GOODWILL,

agreement for the purchase of, of trade, ix

H.

HOUSE.

agreement for the purchase of a, or other buildings, ii

together with fixtures, with provisions for their valuation, ii a, in town for a term of years, (taken instead of a lease) xii furnished, in town for a term of years, (taken instead of a lease) xiii an unfurnished or furnished, in the country for years, (taken instead of lease.) ib.

a, in town or country either furnished or unfurnished, for months or welk (taken instead of a lease) ib.

the lease of a, in town with or without furniture for a term of years, xv

xv

an underlease of a house in town or country furnished or unfurnished, it for the lease of a, by tenant in tail, xvi husband and wife, seised in right of his wife, ib.

HUSBAND.

agreement for the lease of a house by, and wife, seised in right of his wife, xii farm by, in right of his wife, ib.

I.

ILLEGITIMATE,

will in favour of legitimate and, children, lxii

INCAPABLE,

will where legatee is, of managing his affairs, ib.

INCLOSURE.

agreement for the purchase of lands where the purchaser is to pay a share of expenses of, x

INCUMBRANCES,

agreement for the purchase of lands where purchaser is to discharge, ib.

INDEMNITY,

bond for, of a person against all loss to be sustained on account of accepting a bill, xxxvi

executing

an indenture, xxxvi

INDENTURE. See Indemnity.

bond for the performance of covenant contained in an, of even date, xxxiv.

agreement to pay debts contracted during, xxvii

INFANCY,

```
INFANTS.
      bond by vendor to purchaser to secure the conveyance of certain premises by,
         when they shall attain twenty-one years, xxx
INSTALMENTS.
      agreement for the purchase of lands where the money is to be paid by, vii
INTEREST.
      agreement where purchaser is to pay, on purchase money if contract is not
         completed by a certain day, vii
JEWELS.
      will of furniture, and, &c. 1
JOINT-TENANTS,
      agreement for sale by two, to purchaser
                            vendor to two as, iv
                                          T.
LEASE,
      agreement for a house in town for a term of years (taken instead of a.) xii
                      furnished house in town for a term of years (taken instead of a,)
                    an unfurnished or furnished house in the country, for years (taken
                       instead of a,) ib.
                    a house in town or country either furnished or unfurnished, for
                         months or weeks (taken instead of a,) ib.
                       of a house in town with or without furniture, for a term of years, xiv
                                   the country,
                           small shop, ib.
                           shop in a principal street, ib.
                            public house, xvi
                            house by tenant in tail, xvi
                                     husband and wife, seised in right of his wife, ib.
                            copyhold messuage for a term of years, xvii
                            farm by owner of inheritance or his steward, ib.
                                     tenant in tail, ib.
                                     husband in right of his wife, ib.
                       of tithes, xviii
                          glebe lands, ib.
                    the repairing, of a house, the lessor being the owner of the inheri-
                                                        tance, xviii
                                                     having only a term in the pre-
                                                       mises, xix
                    a building, of freeholds, ib.
                                   copyholds, ib.
                               where a surety joins, ib.
                                      the undertaking is very extensive, ib.
                      finishing, xx
                      of an unfinished house which has been partly completed by another,
      bond for the performance of covenants contained in a, xxxiv
  LEASEHOLDS.
      agreement for the purchase of, iii.
                                     where lessor's assent is necessary, ib.
                                     freeholds, copyholds, and, v
    VOL. 11.
                                                                        нн
```

LEASEHOLDS-continued.

agreement for mortgage of freeholds, copyholds, or. xi

to grant an annuity secured on freeholds, copyholds, or, xii

for exchange of, xxii

partition of, by joint-tenants where commissioners are appointed to make partition, xxiv

will of freeholds and renewable, lix

LEGACIES.

will where there are numerous. lx

LEGACY.

bond by legatee to executor to refund, in case of a deficiency of assets, xxxv LESSOR.

agreement for the purchase of leaseholds where his assent is necessary, iii LIFE.

agreement for the purchase of estate for, of vendor, iv LIVES.

agreement for the purchase of estate for, iv

M.

MANOR.

agreement for the purchase of a, ii

an advowson and other premises, v

MARRIAGE,

bond on, for making provision for the wife and issue of the, in case of the death of husband, xxxi

MARRIED WOMEN.

agreement for the purchase of property of, (the agreement being by the husband), ii

will by a, xli, xlii MEDICAL MAN,

agreement by a, attorney, or other person carrying on profession or trade, for a first or other floor furnished or unfurnished, for a year, months, or weeks, xiv MINES,

will authorizing trustees to work, lxiii

MORTGAGE,

agreement for the purchase of freeholds where part of the purchase money is secured on the premises by way of, vi a, of freeholds, copyholds, or leaseholds, xi

N.

NATURAL CHILD. wills in favour of, lx, lxi NUNCUPATIVE, will, lxv

P.

PARLIAMENT.

agreement to apply for an act of, xxviii

PARTITION,	
agreement for, of freeholds by joint-tenants, tenants in common, or coparcene xxii	rs,
copyholds	ib.
	xiii
an estate in reversion or remainder by joint-tenants, tena	nts
in common, or coparceners, ib.	
of freeholds by joint-tenants where commissioners are a pointed to make, ib.	•
copyholds by joint-tenants, where commissioners are a pointed to make, xxiii	-
leaseholds by joint-tenants, where commissioners are	₃p-
pointed to make, xxiv	
PAYMENT,	
bond to secure the, of money from one to one, xxxii	
where there are one or more sureties, ib.  it is to be repaid by instalments, ib.	
paid on notice from the obligee,	i,
PERSONAL,	₩.
agreement to grant a, annuity, xii	
will of monies and, estate, xlvii, xlviii	
moderate, real, and, estate, liv, lvi	
real and, estate with provisions as to the trade of testator, lv	
small, estate and large real estate, lvi	
estate with provisions as to the trade of testator, lvii	
real and, estate, where the legacies are numerous, lix	
where, estate is exempted from payment of debts, lxiv	
PLANTATION,	
agreement for the purchase of, and slaves situate in the West Indies, vi PLATE,	
will of furniture, and jewels, l POST OBIT,	
bond, xxxv	
PUBLIC HOUSE,	
agreement for a lease of a, xvi PUBLISHER,	
agreement between author and, for sale of a work, where a sum is paid for copy-right, xxv	the
profits are divided, i	<b>5.</b>
by commission, ib.	
for editing a work between, and editor, xxvi	
translating a work between, and translator, ib.	
between, and engraver for the engraving of a painting, ib.	
PURCHASE,	
agreement for the, of property by an agent, i	
freeholds of moderate value, ii	
a manor or large freehold property, ib.  property of married women, (the agreement being by	+ha
husband, ib.	щь
houses or other buildings, ib.	
copyholds, iii	
leaseholds, ib.	
where lessor's assent is necessary, ib.	
estate for life of vendor, iv	
н н 2	

#### PURCHASE-continued.

agreement for the, of estate per auter vie, ib.

for lives, ib.

a manor, advowson, and other premises, v freeholds, copyholds, and leaseholds, ib.

lands, together with timber, with provisions for the valuation of the timber, ib.

house, together with fixtures, with provisions for their valuation, vi

a plantation and slaves situate in the West Indies, ib. freeholds, where part of the money is secured on the premises by way of mortgage, ib.

lands, where the purchase money is to be paid by instalments, vii

where time is to be the essence of the contract, ib. for the, of lands, where vendor is to retain title-deeds, ib.

the title-deeds are to be delivered to purchaser, but he is to covenant to produce them, viii

there are special clauses introduced, providing for defects in title, limiting some inquiries, and precluding others, ib.

a reversion, ib.
an advowson, ix
tithes, ib.
growing timber. ib.
good-will of trade, ib.
lands where the purchase

lands where the purchaser is to discharge incumbrances, x pay a share of expenses of inclosure, ib.

a, where all disputes are to be referred to arbitrators, ib. the, of lands where the title is defective, ib.

PURCHASE MONEY.

agreement for the purchase of freeholds where part of the, is secured on the premises by way of mortgage, vi

lands where the, is to be paid by instalments, vii where the purchaser is to pay interest on, if the contract is not completed by a certain day, ib.

#### R.

REAL ESTATE.

will of, where there are limitations to the brothers and sisters of testator, xliv devising it to trustees to sell, xlvii moderate, and personal estate, liv, lvi and personal estate, with provisions as to the trade of testator, lv small, personal, and large, lvi and personal estate where the legacies are numerous, lix

REMAINDER,

will of an estate in, xlvi

REPURCHASE,

agreement for, of premises on defect not being cleared up, xi REVERSION,

agreement for the purchase of, viii

S.

SALE. ï agreement for, by two joint tenants, tenants in common or coparceners to purchaser, iii vendor to two as joint tenants and tenants in common, iv 7 will of monies arising from, of lands, xlix SERVANT. k: bond for the faithful conduct of a, xxxiv 120 SHOP. agreement for a lease of a small, xv in a principal street, ib. the underlease of a, xvi SLAVES. agreement for the purchase of plantation and, situate in the West Indies, vi £ STEWARD, agreement for lease of a farm by owner of inheritance or his, xvii STOCK. bond for the transfer of by a certain day, xxxii will of sum of, xlix reversionary interest in, ib. where testator has a power, l Т. TENANTS IN COMMON. agreement for sale by two, to purchaser, iii vendor to two as, iv TENANTS IN TAIL, for lease of a house by, xvi farm by, xvii TERM OF YEARS, agreements for a house in town for a, (taken instead of a lease) xii furnished house in town for a, (taken instead of a lease) xiii the lease of a house in town, with or without furniture for a, xiv the country, a lease of a copyhold messuage for a, xvi TIMBER. agreement for the purchase of land together with, with provisions for the valuation of the, v growing, ix will authorizing trustees to cut, lxiii TIME, agreement for purchase where, is to be the essence of the contract, vii TITHES, agreement for the purchase of, ix a lease of, xviii TITLE DEEDS.

agreements for purchase of lands where vendor is to retain, vii

are to be delivered to purchaser, but he is to covenant to produce them, viii

#### TOWN.

agreement for a house in, for a term of years, (taken instead of a lease) xii
furnished house in, for a term of years, (taken instead of a lease,)
xiii

house in, or country, either furnished or unfurnished for montls or weeks. (taken instead of a lease) ib.

the lease of a house in, with or without furniture, for a term of years, xiv
an underlease of a house in, or country, furnished or unfurnished, x

#### TRADE.

agreement for the purchase of good-will of, ix

bond by a vendor to a purchaser of a good-will of a, not to, within miles of a certain town, xxx

principal and surety that former will not divulge the secret of, xxxv will where the, has been carried on in copartnership, lii

trustees are to carry on, ib.

of real and personal estate with provisions as to the, of testator, lv. personal estate with provisions as to the, of testator, lvii

TRADESMAN,

bond by principal and sureties to a, for security for any goods advanced to principal, xxxii

TRANSLATOR,

agreement for the translating of a work between publisher and, xxvi TRUSTEES.

codicil changing, of will, lxv

TRUSTS,

bond for the due performance of indenture or will, xxxvii

### U and V.

# UNDER-LEASE,

agreement for an, of a house in town or country, furnished or unfurnished, xv the, of a shop, xvi an, of a farm, xviii

### UNFURNISHED.

agreement for an, house in the country for years, taken instead of a lease, xiii.

or furnished house in town or country, for months or weeks,

ib.

floor for a year, months, or weeks, xiii

by a medical man, attorney, or other person carrying on professon or trade for a first or other floor furnished or, for a year, months, or weeks xiv

for the under-lease of a house in town or country furnished, or, x VALUATION.

agreement for the purchase of lands together with timber, with provision for the, of the timber, v

house together with fixtures, with provisions for their, vi

agreement for a house in town or country, either furnished or unfurnished, for

W.

months or, xiii

1

WEEKS.

first or other floor unfurnished, for a year, months, or, ib. furnished, by a medical man, attorney, or other person carrying on profession or trade, for a first or other floor furnished or unfurnished, for a year, months, or, ib. WEST INDIES. agreement for the purchase of plantation and slaves situate in the, vi WIFĔ. agreement for the lease of a house by husband and, being seised in right of, xvi farm by husband in right of his, xvii WILL, of large freeholds, xxxviii freeholds of moderate value, xl. xli by a married woman, xh, xlii of freeholds, devising them to trustees to settle, xlii real estate where there are limitations to the brothers and sisters of testator. providing for the bankruptcy of devisee, xlvi of an estate in remainder, ib. contracted for, ib. real estate devising it to trustees to sell, xlvii monies and personal estate, xlvii, xlviii a sum of stock, xlix reversionary interest in stock, ib. monies arising from sale of lands, ib. furniture, plate, and jewels, 1 stock where testator has a power, ib. providing for the bankruptcy of legatee, li a single child, ib. where the trade has been carried on in copartnership, lii trustees are to carry on trade ib. trade is in certain events to be sold, liii of moderate, real, and personal estate, liv, lvi real and personal estate, with provisions as to trade of testator, lv small personal and large real estate, lvi personal estate, with provisions as to the trade of testator, lvii freeholds and renewable leaseholds, lix real and personal estate, where the legacies are numerous. ib. where there are numerous legacies, lx in favour of natural child, ib. where legatee is incapable of managing his affairs, lxii authorizing trustees to cut timber, lxiii devising advowson, lxiii, lxv where personal estate is exempted from payment of debts, lxiv devising annuity, ib. where premises are devised to uses to bar dower, lxv. nuncupative, ib.

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